THE VICE-CHAIRMAN (SHRI H HANUMANTHAPPA): He has already translated it.

SHRI ASHWANI KUMAR: My first question is, if the case was addressed by the Finance Ministry to the Swedish Audit Bureau, why was it not addressed to the C&AG? Secondly, I want to know whether the C&AG suo motu on its own, has enquired to find out the details of the Bofors case; if so, what is the progress in this regard? These are the two specific questions on which I want elucidation from the hon. Minister. And if he cannot answer that, I will seek your help for that, Sir.

SHRI JANARDHAN POOJARI: As to what happened prior to the constitution of the Joint Parliamentary Committee, my humble submission is that discsusion was going on. Now this point the hon. Member has raised for the first time. Now I am not dealing with this subject. We have to confine ourselves to the limitation of the subject. We have to keep in mind that we are dealing with the salaries and other amenities perquisites to be given to the C&AG. I will write to him answering this question, why it has not been done and other things. I will reply; I will write to him.

Nok, Sir, I have answered all the points raised by the hon. Members. I have answered all the points raised by hon'ble Shri Nirmal Chatterjee. I once again, at the cost of repetition ....

SHRI ASHWANI KUMAR: About the service conditions of the staff and all others of the C&AG Department, I want clarification on that issue. will he be kind enough to give that clarification at least?

SHRI JANARDHAN POOJARI: All the major points which have been raised, I have answered. It is a simple Bill. I once again thank the

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hon. Members and if at all the hon. Member is not satisfied, I will write to him in detail regarding the action taken on thi?.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

That the Bill further to amend the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, as passed by the Lok sabha, be taken into consideration."

The motion w

THE VICE-CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

Clause 1, the *Enacting Formula ani the Title were added to the Bill.*

SHRI JANARDHAN POOJARI: Sir, I beg to move:

"That the Bill be returned."

The question, was put and the motion was adopted.

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) (AMENDMENT) *TOLL,* 1987

THE MINISTER OF PLANNING THE MINISTER OF PROGRAMME IMPLEMENTATION AND THF NISTER OF LAW AND JUSTICE (SHRI P. SHIV SHANKER): Vice-Chairman, Sir, I beg to move:

"That the Bill further to amend the High Court Judges (Condition*s* of Service) Act, 1954, as passed by the Lok Sabha, be taken into consideration."

As you are aware, durine the last year, substantial improvements in the service conditions of the Judges of the High Courts and the Suprer

[Shri p. Shiv Shanker]

t have been made. The present Bi is also a result of our concern bringing about further improve-
ments in the service conditions of the J t J ges.

I nis Bill, pased by ihe Lok Sabha, on 1-87, it is proposed to increase the e Rent Allowance to the High Court - fram the present 124 per cent of the &larj per month to a fixed amount of K 2.500 per month. This is being to compensate such of those hon- 01 ble Judges of the High Courts who ! to stay in their own houses or *biu,e* to make their own arrangements, as tlovernment accommodation cn be made available to them.

may be appreciated that even after the substantial improvements in the sala-. of the Judges, which has been increased from Rs. 3,500 to Rs. 8,000 per month, an amount of 12-1l2 per cent as House Rent Allowance to the Judges does no: enable them to live in a decent and proper house befiting their status and dignity. With the proposed amendment to section 22(A) of the High Court Judges (Conditions of Service) Act, 1954, this situation is expected to be remedied,

hope the Bill will receive the whole-ed support of the House.

THE VICE-CHAIRMAN (SHRl H. HANUMANTHAPPA): There is one amendment by Shri Satya Prakash Malaviya.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता हूं कि :

"उच्च न्यायालय न्यायाधीश (सेवा शर्तें) अधिनियम, 1954 का और संशोधन करने वाले विधेयक को राज्य सभा के निम्नलिखित सदस्यों की प्रवर समिति को सौंपा जाये, अर्थात् :–

1. श्री रशीद मसूद
2. श्री चित्त बसु
3. श्री चतुरानन मिश्र
4. श्री जगदम्बी प्रसाद यादव
5. श्री शंकर सिंह वाघेला
6. श्री बी० सत्यनारायण रेड्डी
7. प्रो० सी० लक्ष्मन्ना
8. डा० जी० विजय मोहन रेड्डी
9. श्री कैलाश पति मिश्र
10. श्री सुकोमल सेन
11. श्री सत्य प्रकाश मालवीय

और उसे आगामी सत्र के प्रथम दिवस तक अपना प्रतिवेदन प्रस्तुत करने का अनुदेश दिया जाये।"

The questions were proposed.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA); Now the motioa and the amendment are open for discus sion. Shri Upendra.

SHRI PARVATHANENI UPENDRA: (Andhra Pradesh): Mr. Vice-Chairman, Sir, this Bill is a simple Bill, providing for enhanced house rent allowance for the Judges. Normally we should not grudge such small benefits to the judiciary, and I have no particular comment about the amount which is now being sanctioned. But 1 would like to take this opportunity to give a few of my views on how the judicial system is functioning, of course, within the ambites of the Constitution and our own responsibilities here.

Sir, it is a known fact that the common man who goes to the court, at various levels, is being harassed becausa of the abnormal delays in dispensing justice. Whether it is a High Court or the Supreme Court, years are consumed in deciding a case. Even for listing the cases they are taking several months or years. Today, the Government's own admission, nearly one and a half lakh cases are pending in the Supreme: Court, and ten times that number in the High Courts. The Judges complain that all the vacant

posts et judges in the High Courts and the Sopreme Coun are not being filled in lime. From the answer the Minister has given recently to a question, we find that about a dozen vacancies are there in the Supreme Court and about a hundred vacancies are there in all the High Courts. May he, I am wrong. I am subject to correction Fifty. That may be. This itself indicates that there is something seriously wrong with our judicial systtm and its management. I do not know why so much time should be consumed or taken by the Government in filling up these vacancies. When recommendations come promptly from the Otfef Justices, why the Government should tate so much time at its level to fill up tljcse vacancies? I hope the Minister will answer when replying to tha debate. But it is a very sorry state of affairs that lakhs of cases are pending in the courts. .Something has to he done about this immediately.

T am sorry to say that the Judges whom we kept on a high pedestal always, are becoming subjects of controversies also. *This* is an unfortuna'g development. The sancity, which was being attached to the judicial system earlier, is being eroded swadually, and the confidence also is being eroded. I do not know whom to blame wherter we should blame the Judges or *ihe* mode of appointment of the Judges or the political masters who are alleged to he interfering with the judicial decision? aqd Judicial functioning.

SHRI P. SHIV SHANKER: That of coarse, is unfair. Nobody is interfering in judicial decisions.

SHRI PARVATHANENI UPENDRA: You can deny. That is why I used the world Heged."

SHRI P. SHIV SHANKER: But 'hat may" be lurking in your mind.

SHRI PARVATHANENI UPENDRA: No' no. -Alleged interference", T said. I did. not say "positively.". If if is not a fact you can always deny. There is withing wrong in that.

Also, the system of transfer of Judges, which has been recently introduced some time ago, is also being used to pressurise, indirectly threaten, intimidate Judges. There are Judges who are in constant fear that if a particular decision goes in a particular way, the powers that be would be annoyed and unhappy. and, therefore, they want to play safe. That is one more allegation winch has been normally made by the legal circles after the introduction of this transfer system. I do not know whether this transfer system has helped the judicial quality That, the Minister will tell.

In this connection, I would also point out certain observations made by the hon. Minister for Law and Justice in the course of a lecture which he gave in Hyderabad some time ago.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Mr. Upendra, he has already clarified on it on the floor of the House. Why do you mention that?

SHRI P. SHIV SHANKER: I have no objection, Sir.

SHRI PARVATHANENI UPEND RA: What is it? It is relevant.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): He has clarified on it.

SHRI PARVATHANENI UPENDRA: I am quoting his own words.

SHRI P. SHIV SHANKER: I am having no objection. I will have an occasion to meet it.

SHRI PARVATHANENI UPENDRA: Personally speaking and strictly speaking, f woul3"Eave myself agreed to some of the observations of the Minister. He has touched upon » number of points which myself have been holdlne.

SHRI V. NARAYANASAMY (Pondicherry): The same "NEWSTIME"?

SHRl P. SHIV SHANKER: The same "NEWSTIME".

SHRI PARVATHANENI UPENDRA; But, coming as they do from the hon. Minister, somehow I take them with a pinch of salt. I do not doubt his sincerity, hut I feel that there must he something else behind his comments which he made against the Supreme Court particularly.

SHRI P. SHIV SHANKER: When have you become an astrologer?

SHRI PARVATHANENI UPENDRA; The first point he made is about the elitist character of the Supreme Court Judges and I do not know whom he is blaming. It is their Government which has been in power here for the last 40 years and if they chose to appoint such judges whom he thinks are responsible for the present state of affairs or some unpopular decisions or anti-people decisions, the Government itself is to blame. One point on which I particularly agree with him ...

SHRI P. SHIV SHANKER; Don't agree with me. You never agree with me.

SHRI PARVATHANENI UPENDRA; Sometimes I said I do agree.

He says, and I quote;

"Without so saying, the judiciary claims to be supreme. The power to declare constitutional amendments, legislative enactments and administrative action *ultra vires* and invalidate them is of such a comprehensive nature that, if not wisely exercised, it will put the whole mechanism of constitutional checks and balances out of gear. The power to issue writs under Articles 32 and 226 of the Constitution is of widest amplitude. It is controlled, if if at all it can be said, by the self-imposed restraint; rational approach, wisdom and national good; all of which are weak constraints over such extensive power."

I fully agree with him on this point, but tht behaviour of some of the courts and their decisions and their actions are at the instance of the ruling party which itself has taken recourse and induced the judges to overstep their limits. They have to be blamed. I do not want to go further and create another controversy here. We have been diseussing it for the last four days and we have discussed about east Andhraaiu pending petitions in the Pradesh High Court which are purely political interest litigations. The Supreme Court has been taking credit all these years, for the last few years about the public interest litigation which it Has started. We are happy at least the judges have come out of their glass towers and they are concerned about the common man. But, unfortunately, this has now overstepped that limit and even political interest litigations are being entertained by the courts as a part of the writ jurisdiction. Here I would like to quote from one opinion from Mr. A.G. Noorani. on this fact. I quote;

The public interest litigation, has come to stay, none denies. But in the High Court judge's case, Justice Bhagwati uttered this sound warning; We hope and trust that the High Courts of the country will also adopt this proactive, goal-oriented approach. But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona *fidt* with a view *to* vindicating the cause of justice and it he is acting for personal gain or private profit Or oat of political motivation or other oblique consideration, the court should not allow itself to be activised at

the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in court."

That is what Mr. A. G. Noorani has said. I doubt how many judges are observing this dictum nowadays.

Now, Mr. Shiv Shanker has made many uncomplimentary references to the Supreme Court. He also asserted in this House that all theses remarks applied to the Supreme Court judges earlier to 1980. If I remember correctly, he said from 1980 the Supreme Court has been functioning all right in the interest of the common man. Before that he said that it was not so.

SHRI P. SHIV SHANKER: Neither have understood me properly nor you have properly read the article.

SHRI PARVATHANENI UPENDRA: May be,

SHRI P. SHIV SHANKER; I am prepared to place a copy on the Table of the House. I have got a copy. I have no objection. I will read it out £iyself and you also read it out.

SHRI PARVATHANENI UPENDRA: I will quote from Mr. Shiv Shanker's speech;

"Madhadhipatis like Keshavanan-da and Zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except
the Supreme Court of India.....
Anti-social elements i.e. the smugglers, FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court."

This is his comment. I am really glad that Mr. Shiv Shanker has developed a liking or affection for the underdog suddenly and do not know how to comment upon this because in commenting on the courts action in one of the cases Justice Sabyasachi Mukherjee said, I quote:

"My conscience protests to me that when thousands of remedyless wrongs wait in the queue for this Court's intervention, the petition at the behest of diamond exports and dry fruit exporters, where large sums are involved, should be admitted at such quick speed."

This was a comment on the hearing of the bail application of an industrialist L M. Thapar, and that shows sometimes promptitude is shown by the Judges at the instance of some powers that be. Mr. Shiv Shanker particularly is often accused, may be unjustifiably, of influencing the Judges, I do not know. But that is the common charge.

SHRI P. SHIV SHANKER; Nobody has accused me except you, that too taking advantage of this House.

SHRI PARVATHANENI UPENDRA: That is one charge which is made. Wherever we go they always say that no Judge does anything without consulting Mr. Shiv Shanker. Of course, I am subject to correction, I may be contradicted and it is not a charge. But most of them consult Mr. Shiv Shanker in many of the cases whether it is in the Supreme Court or High Court.

He has also started this theory of committed Judges. In this article he also said that since they are not giving proper judgement it is open for the Government to go into the antecedents of theses people to verify their commitment and all that. If it is only a question of verification of their commitment to the Constitution, the nation's ideals, etc., there is no quarrel. But what we understand is commitment to the Congress party dictates and Congress party orders.

SHRI V. NARAYANASAMY: That is your interpretation.

SHRI PARVATHANENI UPEND RA: Yes, My interpretation. Because of such 'committed Judges' there is delay in appointments also. They are always apprehensive that if they appoint a correct man or somebody, he may later become difficult and he cannot be managed. And. therefore, several times the flies are returned. Even when the Chief Justice recommends, even when the Prime Minister or Chief Minister recommends again the files are being recirculated. Therefore, it is very necessary to evolve a proper system for appointment of the Judges itself. That is very essential. The present system is full of loopholes and gives undue leverage to the establishment to pack and choose, to bypass, to ignore, to supersede even qualified people and appoint their own people. Therefore, there must be a foolproof system. In some countries, they are elected, in some countries, there are committees to appoint. Therefore, some system has to be evolved so that the correct people are appointed to the judiciary. This is very essential. I do not know and Mr. Shiv Shanker will definitely clarify because some of his remarks at least against. the Supreme Court, are really in the nature of contempt of the court. If he were an ordinary citizen he would have been hauled up by now for contempt of the court. But I do not know whether he has deliberately used this occasion to make this speech, whether it is his concern for the common man and the improvement of the judicial system or he used it as pressure tactics so that they will be afraid because of his bombardment. hereafter to be careful and bow to his dictates. I do not know but it is not a healthy sign to attack the Supreme Court, the highest court in the land, to deride and east doubts on its integrity.

Whatever it is, I feel, a thorough revtew of our judicial system is necessary.

Mr. Shiv Shanker has been in aharge Of these legal affairs in the I Centre, directly or indirectly. fo J whichever Ministry he had been, has always been involved in the judicial matters in the Centre for the last 7-8 years. Therefore. I feel that the time has come for him to think of radical changes in the judicial system so that the system wil] improve and the common man and the people of India will benefit. Thank you.

THE VICE-CHAIRMAN SHRI H. HANUMANTHAPPA): I requested the Members to kindly confine themselves to the Bill. The point is if we have to go by the Business Advisory Committee. . . *(Interruptions)*

SHRI ALADI ARUNA alias V. ARUNACHALAM (Tamil Nadu):. He has taken less time.

SHRI SATYA PRAKASH MALAVIYA: What was the urgency for this?

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): For everything you want to rise. What can I do?

SHRI SHANKARRAO NARAYAN-RAO DESHDMUKH (Maharashtra): Mr. Vice-Chairman Sir. I rise to sup port the Bill. Though +he Bill is ?ery small in nature, its reflections are fer and wide. It refers to the very important section of judiciary and we all know judiciary is an important organ of the Constitution of India. It is kept independent throughou* its working, recruitment, *etc.*

Sir, the Bill seeks to provide a lumpsum fo a Judge who is not given arty official residence and that flxed sum Rs. 2500. Sir, the economic coudv^. tions of the judges are not very satisfactory, as we all know. They have to face so many problems in their everyday life and their conditions in everyday life are not very satisfactory. As we all know if we want to take a house on rent, first *we* have to arrange deposit. that too

withou', a reason and then the rent. Such are the conditions prevailing in thg country regarding the taking up Of houses on rent. So it a judge requires a better house *ior* his living, be'ter accommodation for his everyday life, then he has to approach somebody and when he comes through somebody for securing a rented house and if somebody obliges him, naturally, the judge remains under his obligation And, late,- on. he has to return that in one way or the other. This is temptation which creates rup'ion. Corruption starts from here only. Therefore, while consldi particular class of Judges of the judiciary throughout the country as such, we must give them a secured status in the society. We must see that they are free from wants, if you take the case of a Judge who is tansforrcd, he is not only without a house but there is no arrangement for the education of his children. Are they free from wants? Can we say they are leading a very satisfactory life? Therefore, in order to get all these facilities for their everyday life, they are required to oblige somebody in one way or the

ether and this is how the temptation comes in. Therefore, my suggestion is. give them better status in life**;** make **t**hem free from wants so as to enable

them to function properly and apply their mind to judicial principles. Nowadays, the spheres of law have enlarged very much. Twenty years ago, ihe spheres of law, or some call them the species of law, were very lis Now, many new systems have come into being. New technologies have come. And all sorts of new [is Ia tions, legislations even in respect of water and air, are coming. A Judge is expected to consider them, concentrate on them, to see the provisions of

Whe legislations and enactment deliver the judgment. For all these purposes, concentration of his mind is necessary. When could he concentrate? If he has better living conditions. When could he concentrate? When he

is free from wants. And that is exactly what is not happening. Our hon. Minister of Law comes from the same walk of ife, law. Therefore, I would request him, I would call upon him, to give directions to all the States Governments to fall in line wit] principles that are laid down b Central Government. I knew the conditions prevailing in Nasik. Except the Distric'; Judge, nobody ha any house accommodation and ; Judge is under the obligation of body. There the problem starts. They are under constant orders of trai They are under constant difficnl respect of the education of their children. So, this thing could be boi mind. Only enhancing of the allov will not do. You have given them a lump-sum of Rs. 2500. I p.m sun-Only today some of my friends have come from Bombay. They have told me just this morning that the land price it Nasik is Rs. 1000 per sq. metre what is this? Either you give houses for Judges or give them reasonable a ances and make them deliver ments properly. How can a Judge deliver judgements properly unless his wants are provided for? Housing is the basic problem for all Government officials. It is particularly so for Judges, because from Judges you expeet l;:ying down of morals for a sei society which is expected under Ihe Constiution of India. When you pect that a Judge should lay down certain morals for a secured society, to be followed by the society, should we not expect that the Judge should be in a good position to live the everyday life? Thereafter I want to bring to your notice a very strange thing which is happening in rural areas. In mofussil areas a judge is at the the of a sub-inspector of police. He asks the sub-inspector of police. "Mr. Sub-transpori? My Sub-Inspector will you transport? Mr. Sub-Inspector will you that I get a proper house anywhere through you?" And immediately the police officer can do it because police officer manages most of 'he things in some wav or other bettor than the judicial officer. Such is condition. An ordinary sub-inspector of police helping a judicial officer—is it not a strange phenomenon in rur~l

[Shri Shankarrao Narayanrao Deshmumkh] areas? A very strange phenonmenon. Not only that. The sub-inspector of police arranges for the eduaction of the Judge's children, for their transport for going to pictures, for everything. I am telling you the particular truth. I bring this to the notice of this august House for a particular purpose, to show that the judiciary is the most neglected. When a panchayat samithi president or chairman can be ided with a vehicle, why not a judge who has to do duty fifteen days at one place and fiften days at an-

I often travel on buses and what a horrible condition it is. When you consider giving house rent allowance to a High Court judge, should you your eyes in regard to the district level judicial officers? Certainly because, under the Constitution ary functions as a whole. There- [request the honourable Minister to call upon the State Governments to understand the problems of the et level judicial officers and give their basic necessities; otherwise, they will not be able to lay down for ired society those morals which are expected of hem under the Constitution.

DR. R. K. PODDAR (West Bengal); Mr. Vice-Chairman, there is nothing to oppose in this Bill which deals with a small matter. The Minister wants to give Rs. 2500 to a High Court towards his house rent allowance. But I wonder what the rationale is in trying to satisfy judges in this ad-hoc and piece-meal manner. Only a few months ago their salaries were raised to Rs. 8000. Why did not the Government remember at that time itself that the judges would have to live in houses? In any case, the question is that this Rs. 2500 is not much. Here in Delhi there are hotels where you have to spend that much amount just for one night: So I don't grudge this provision.

Then there are other judges also— district judges, sub-judges, etc.—some of whom draw less than what a Class IV employee in LIC earns. I undesrtand that the average pay of a lift operator in the LIC is about Rs. 2,500/- per month and some of the Judges earn less than that. I do not know why the Government is not thinking about this aspect. The point is that the Gov-rnment is trying *to* solve these problems in a piecemeal manner. They want to have the best people as High Court Judges and they want to compensate them in salaries, pensions, house rent allowance, etc. But the whole society is crumbling now. Dou you want the best people only for the posts of Judges? You should also want the best people to work as professors, as scientists. as dotcors and as engineer. A few months ago. there was , strike for about three months or so in the Delhi University by the professors. Unless you solve the social problems, socio-ecnomic problems, in an equitable manner, this sort of piecemeal legislations would not lead you anywhere. You give something to the Judges on the one hand and, on the other, you also give the threat of punishment. I will not say 'punishment', but some threat you give, some kind of a threat Just a few months ago, the Chief Justice of the Calcutta High Court was transfered to Bombay and the Chief Justice of the Punjab and Haryana High Court was transfered to~l Calcutta. That Chief Justice was appointed just for one day in the Punjab High Court; So, in one way, you try to satisfy them by offering them high salaries and high perks and, in another way. you give them the threat of transfer,- The Government is actually wanting to engender sycophancy among the Judges so that they do not go against the Government and they are allowed to enjoy their benefits. I think the Government should give a serious thought to the judicia system as a whole.

Sir, there are 23 lakhs of cases pending in the different courts in India and about sixty-three lakhs of gants are awaiting justice. Just by giving more salaries to the Judges or by filling up the vacancies, does the Government think that the whole

judicial system will be allright? Does the Government think that the people will get justice? I heard from one of my Mends, eminent in the judiciary, something about an unemployed youth who went to the court for justice. He was the ninth man in a panel l of nine persons to be appointed by the Indian Oil Corporation. The Indian Oil Corporation appointed eight persons from that panel and this person was excluded. Therefore, he went to the court. He lost his case. The Indian Oil Corporation also contested it. The Division Bench was in favour of this man and ordered that he should be bsorbed against a future vacancy. But the powerful and mighty Corporation went to the Supreme Court just to debar the unemployed youth from having a position in the Corporation: Now, the case has pending in the Supreme Court

eight or nine years and the man, is unemployed youth, does not have the money to pay for his second class fare from Haldia to Delhi. So, you see, the poor man is being harassed by the mighty and the powerful. It is because. having more money, they can appoint very powerful lawyers just *to* lrustrate the expectation of justice by the underprivileged section. So, ail these issues have to be tackled hy Government. You have to see how the judicial system can be improved. Can you not nationalise the whole judicial system? Sir, they say that they are for socialism. But, in the socialist countries, the judicial system is nationalised. Just as the health services are nationalised, the judicial system also can be nationalised. Why cannot the judicial system be nationalised? If that is done, the lawyers and the judges will all he paid from the national exchequer and the people also ^an approach them easily.

The last point that I want to make is with regard to the allowances and pay of the Judges. But they have to be paid by the State Government. And most of the States have deficit budgets. So I would request the Central Government to make some extra grant to the State Governments on this account so that they can suitably pay to the Judges.

With these words, I conclude.

SHRl V. NARAYANASAMY: Mr. Vice-Chairman, sir, I support the Bill piloted by the hon. Minister of Law.

Sir. this is a simple Bill which replaces an old provision. Sir, the entire judicial system in our country has undergone a radical change. To be a Judge is a difficult task. It is also quite complex. The Judges have to go through the facts in different cases and they have to judge the mater according to the well settled law and the Statute. As I already said, the duty of a Judge is to judge the matter not only from the point of view of the Statute Book and the precedent but also from the point of view of the changing social and economic customs in the country. The recent development that has taken place in the matter of rendering justice is a good example, because to render justice to a person who has no source of income or who is not in a position to Pay a huge amount to the lawyer means actually rendering justice to the poor. This system was introduced three or four years back and it brought a radical change in the thinking of the judge, not only from the judicial point of view but also from the point of view of social economic and political changes that have taken place in the country.

Sir. we find that in the High Courts there are vacancies to be filled un. The hon. Minister has replied in the House that as on 10th October 1987 about 50 Judges have to be appointed in different High Courts and 10 Judges have to be appointed in the Supreme Court. It is also a fact that there is a backlog of cases. Cases have been pending for decisions for years together. The process adopted by the Government in getting a recommendation from the Chief Justice of a particular High Court, then from the Chief Mi-

(Shri V. Narayanasamy]

meter of that particular State and then making their own enquiries and then coming to a conclusion is a leng-they process. I Egree with Upendraji who says that there should be a time frame process in this matter, because we are already burdened with lakhs and lakhs of cases which are pending in courts and litigants are waiting for judgments. By delaying appointments of Judges we will be further adding more cases in the pending list. Therefore, I would like to urge upon the Minister to evolve a system either by appointing a Comission as we have of U.P.S.C or by having the Supreme Court Judges or the High Court Chief Justices to decide appointment of Judges. That system may be evolved. Of course, I quite agree with the hon. Minister that the antecedents of a particular judge who is to be appointed should be throughly gone into. The Judges perform a sacred task. The duty of the Judges is sacred. He has to decide a case on its merits. Therefore, the appointment of Judges should be made in a time-frame process so that the pending cases can be eliminated.

Sir, in the last session we have increased the salary of the High Court Judges. The Judges are also very happy. Now we ere increasing the House Rent Allowance of the High Court Judges according to their status so that they may survive independently without depending upon any body. I am of the opinion that filling up of the posts of High Court Judges will not solve the problem. The posts of officers who have to help the Judge in deciding the matter should also be filled. There are so many posts lying vacant. They are the posts of subordinate judicial officers at the State level. This point should also be looked into.

Anothe'- point is about the salary tof Judges at the lower levels, apart from the Supreme Court and High Court Judges. There is dispearity in the salaries of a District Judges and the City Civil Court Judge in Delhi and in other Union Territories. I have got a personal example of the Judicial Officers working in the Union Territory of Delhi and the Union Territory of Pondicherry. Their salaries at various levels, i.e. Sub-Judge, District Judge and District Magistrate are not on par with tha Judges 01 the same level in Delhi. I had written as letter to the hon. Finance Minister. The hon. Finance Minister did not .give any justification for- this disparity in the salaries of these Judges. The hon. Minister is going to reply to the queries raised by Mr. Upendra. The hon. Member has said that the High Court has become a place of bribe earners and so on and so forth.

PROF. C. LAKSHMANNA *(Amah* ra Pradesh); The Supreme Court not the High Court.

SHRl V. NARAYANASAMY: [im sorry. It is the Supreme Court. He said that under the protective of law those persons are evading punishment and they are getting place in he society. We will ha to do it in the right spirit. Those persons get the protection of law ana are living in the society. Thos sons should be eliminated fror society. That is my interpretation. The hon. Minister would have said that. *(Time hell rings) [Interm* The hon. Minister is gong to answer the ponints which I have 'raise.i or which Mr. Upendra has raised. I am giving my interpretation.

SHRI V. GOPALSAMY Nadu): We are not objecting" to We want to know what is your 'Mint. kindly elaborate it.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Don't answer the interruptions.

SHRl V. NARAYANASAMY-. Sir. I will say that by the procedure fcaey are getting protection and those persons who are to be punished by the

law are not getting punished. Therefore, there is no mistake, there is nothing -wrong in the hon. Minister's verreion at the lime of the conference. I would like to say on this aspect that bette.: conditions are to be made available for the High Court Judges so that they will be able to discharge Judeship in a fair manner and also protect the interests of the litigants in the society. Thank you, Sir.

SHRI ALAD 1 ARUNA *ulids* V. ARUNACHALAM: Mr. Vice-Chairman Sir, I rise to extend my support to the Bill moved by the hon. Minister.

[The Vice-Chairman (Shri Jagesh Desai) in the Chair.]

Sir, there is no area of difference among the Palriamentarians regar- ding the higher emoluments, exemptions, concessions and facilities to the Judges of High Courts and the Supreme Court. The Judges who do not avail the facility of official residence under this Amendment Bill are entitled to get to the extent of Rs. 2,500 p.m. in lieu of prevailing higher rentals. Sir, considering the income and statte of the doyen of the Bar to maintain the independence of the ju-
diciary, it is quite essential to protect the economic security of the Judges.

Sir, our Constitution is very specific regarding the qualifications, allow-aiaceB, service conditions, age limit, etc. of the Judges. In the province of service also our founding fathers have incorporated necessary Articles so as to allow them to function without fear or favour. Articles 121, 126, 127, 141, 142,, 143, 144, 211 and 260 are considered to be the bulwark for the independence of judiciary.

Sir, supremacy of our judiciary has been well, established under Article IM. We are quite aware that there will no constitutional democracy without effective judiciary, he controversy between the Judiciary and the Legislature is not a new one. We are aware of the fact that the judgement of Justice John Marshall in 1803 ha Barbary Vs Madison case created controversy in the History of judiciary. In 1937 President Roosevelt raised cri'.icism against the supremacy of judiciary and he severely condemned Supreme Court for saying that he is not able to implement the New Deal. Sir. what was alleged, what was criticised what was charged by President Roosevelt has been repeated by our hon Minister in a different phraseology against our Supreme court Sir. .

SHRI V. GOPALSAMY: Are you justifying it?

SHRl ALADI ARUNA *alia* V. ARUNACHALAM: That is a different thing. Our Minister is alleged to have said that anti-social elements smugglers FERA violators, bride-burners and reactionaries have found their haven in the Supreme Court. Sir, the speech of our hon. Minister is highly emotional, provocative and irritant. But he has delivered it with a definite design; there is no difference of opinion about that. I am not in a position to criticise or justify the allega-tions. But out of anxiety and thirst for jurisprudence I would like to ask the hon. Minister as to how Judges are responsible for this state Of affairs. While they take oath, they express allegiance to the Constitution and not to the Legislature, not to the Executive, and not to the party in power. Only they express their allegiance to the Constitution. They are accountable to the Constitution. Our Minister is very particular about the accountability of the Judges of the judiciary. They take the oath of allegiance to the Constitution. They are accountable to the Constitution. So, when we frame the law, if our law is defective, our law has loopholes then an offender would easily escape through these loopholes or utilising the defects for which the Judges are not at all responsible.

[Shri Aladi Aruna *alias* V. Arunaeha-larn]

Sir. in such circumsances my as sessment is that either we surrepti tiously make a law for their escape or we lack wisdom in making the law. Sir. we cannot question the con fidence of the courts in any event. The courts are considered as temples of justice. Judges are like sacred priests. Our Law Ministry is a Board of Trustees and the Law Minister is the head of the Trust Board. If the head of the trust board criticises the temple, then the entire system will collapse. *(Interruptions).* Sir, even though the supremacy of the judiciary is accepted, the controversy regar ding the implementation of the decisions of the court or the degree of the court or the finding of the court is there and these can ba implemented only with the cooperation of the executive and the legislature. As Presi-den Jaeson sarcastically remarked, John Marshal made the decision let him enforce he said. But the cooperation of the executive is necessary for the implementation of the judgement. Even though in the United States there is controversy and there was controversy between the judiciary and the executive nobody is allowed to create any dangerous situation in the implementing area. Therefore operation from our area is lecessary. Co-operation fram executive and legislature to the judiciary is quite essen tial. *(Time bell rings).*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now the last point.

SHRI ALADI ARUNA alias V. ARUNACHALAM: No Sir. You have to give me some more time. So far I was speaking only about the principles. Now I have to come to the points. *(Interruptions)*

Sir, it has been said that if justice is delayed, it means justice is denied. Sir, if you go through the number of oases pending in the Supreme Court up to the end of 1985, they number 1,56,986. *As* far as High Courts are concerned, the number of pending cases up to 31-12-1985 is 13,75,790. If you add the current figure, I hope it will exceed 15 lakhs in various High Courts. Sir, what is the cause of all this delay? Who is responsible for this delay? My reply is that it is the policy of the Government in appoin-tiing judges. That is an important point, because now the Government selects the panel and asks for the panel from the Chief Justices of the High Courts and one panel from the State Governments.. .

SHRI P. SHIV SHANKER; No, no, panel from the.

SHRI ALAD; ARUNA *alias* V. ARUNACHALAM: They are recom-mending tO you.

SHRI P. SHIV SHANKER: It emanates from the Chief Justice.

SHRI ALADI ARUNA . ARUNACHALAM: Anyway, you are accepting the list from the State or the Governor sends the list after getting the panel from the Chief Justice of the High Court.

SHRI P. SHIV SHANKER: Comments of the Chief Minister.

SHRI ALADI ARUNA a*lias* V. ARUNACHALAM: You kindly correct me if I am wrong. The Chief Justice of the High Court prepares the panel and then the Government sends

SHRI P. SHIV SHANKER: No, no.

SHRI ALADI ARUNA *dias* V. ARUNACHALAM: That is my under-standing. Afterwards the Governor sends the panel to you. Right or wrong, you kindly tell me because in our State.

SHRI P. SHIV SHANKER: May explain this so that the hon. Member may not expatiate further to create confusion?

Sir, there is a memorandum of procedure that has been settled about the appointment of judges. That memorandum of procedure is in terms of

article 217 of the Constitution so far as the High Court Judges appointment is concerned. With regard to the Supreme Court Judges, it is article 124. Under that, even though the Constitution itself says that the President shall appoint in consultation with the Chief Justice and the State, what often happens is that because of this memorandum of procedure that has been evolved, the Chief Justice sends the names. He addresses to the Chief Justice of India, with copy to me and copy to the Chief Minister. That is how it goes. Then the Chief Minister has to have his comments, his views on that. Then he refers it to the Governor. The Chief Minister after making up his mind and also after having the views of the Governor, sends it to the Law Minister. In the Law Ministry, in the Ministry of Justice, after we process it, we refer it to the Chief Justice of India. Thereafter I take my view and then advise the Prime Minister and the President. This is how it happens. It is possible, because he has in mind his own State, under this procedure itself, even the Chief Ministe'r does not agree with the names recommended by the Chief Justice. He can then suggest his own names but he must seek the comments of the Chief Justice for those names also before he makes them available to me, along with the views of the Governor.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM,: I am also saying the same thing and you are repeating it in different words. What I said has been repeated by you.

What I want to say is that in the matter of the Chief Jusetice of the High Court being appointed from other States, it causes so cany controversies. They *are* at the mercy of tha Centre. They never give due respect to the State Government. They are creating controversies and they become champion of controversies in the non-Congress-I States, the States which are under the control of a party other than the party ruling at the Centre. For example, there were two cases in our State. In preparing the panels, a particular community was recommended in the first panel also

SHRI P. SHIV SHANKER: It is not fair that in the absence

SHRI ALADI ARUNA *olios* V. ARUNACHALAM; But I am not men tioning anybody.

SHRI P. SHIV SHANKER; But you said 'a particular community': obviously it means something.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: We have to expose; but I have not mentioned any-name or any community. You can infer anything. That is a different matter but I am not mentioning about any community. Out of five vacancies, four lawyers recommended belonged to a practicular community. It was stronr gly opposed by our Govem-ment. We are not against any caste but we will not allow any casts to dominate other casts. I would appeal to the Government, to the hon. Minister to give P the policy of appointing Chief Justices from other States. How can a judge, who hos no knowledge about the language, the culture, the habits and the behaviour pattern of the people, give proper judgements? How can a judge who has no knowledge about the lega' luminaries of the local Bar can form an opinion about the merit of a can didate while preparing a panel' Therefore, appointment of judge from other States should be avoided The appointment of judges from othe States to a particular State is not onl anti-federal, it is against the interesi of the State Government. You wi agree, there are three wings: Legisl ture. Executive and the Judiciary. L gislature is under the control cf ti Chief Minister; Judiciary is under ti control of the Chief Justice, and ti Executive is under the control of t! Governor. Governors and Chief Ji tices are appointed from other Stat Do you mean that this is what a se government should be known as?

[Shri Aladi Aruna *atias* V. Arunaehalarn]

it serving any federal principal? That is why I appeal against appointing judges from other States and this practice must be given up once and far all.

Sir, in the U.K., the judges are nominated by the Lord Chancellor. In the U.S.A., they are nominated hy the President with the consent $_0$f the Senate. The hon. Minister is very particular about the accountability of the judges. That is why I want, that appointment of the judges of the Supreme Court should be ratified by Parliament and in respect of the judges of the High Courts, the appointments should be ratified by the Assembly concerned. Unless this is done, there is no chance of controlling or making the judges accountable to the Legislature. Thank you.

SHRI M.S. GURUPADASWAMY (Karnataka): Mr. Vice-Chairman, Sir, I have no quarrel with this Bill. 1 welcome i\ I believe, the conditions of service $_0$f the judges should improve and improve decisively at all levels because it is one of the prerequisites to safeguard the independence af the judiciary. Good emoluments and other facilities are necessary to msure Iheir freedom.

Sir, Whenever we discuss the judi- tary, we should remember that we re working in a federal set-up under written Constitution. Those who for- lulated our basic document had aken care to see that for a federal et-up like ours, the sepration of pow- rs should be respected as far as assible. We have three wings, three mbs of the Government; executive. idiciary and legislature. All these ree wings have got to function with- the four corners of the Constitution. legal terms, all these ageneies, ribs, instruments, are accountable to Cons-itution of India. My friend s also talked about tha accotmtabi of the judiciary in his address at s seminar about which there was a reference. We have to remembei that we function under the Constitution of India. If we have to make any change in respect of any limb we have got to change the Constitution of India. We should not, and cannot, just tamper with the respective spheres of the three limbs. They are based on checks and balances. It is a very old concept which has been evolved and the Constituion-makers hac! taken inspiration from various sources of aur thority while framing the Constitution. The danger in a modern set-up is not from the judiciary but from the executive. Let us understand this. The executive by its very nature, tries to encroach upon the powers and functions of the legislature on the one side and the judiciary on the other. The problem of the present situation is, how to contain the executive, the overgrowth of the executive, bow to prevent executive despotism to safe guard the democratic set-up in this country? Since the Constitution was formulated, if you look at the enttre gamut, you will appreciate there is a tremendous growth of the executive power in this country which has been detrimental to the free functioning of the legislature and the judiciary. That is the problem. There may be a natural growth of the executive power but in our country here has been constant and deliberate attempt made by the executive to restrain and restrict the operations of the legislature and the judiciary. Parliament, as you know, is the creator, the executive the creature. Today the executive is the creator and the Parliament is the creature in acual practice.

In the judicial field also, with all respect to my friend Shiv Shankerji— ho is more knowledgeable than me. I straightway, concede that—-as a student of political history I say, there is a progressive erosion of judicial independence in this country. There is very rapid and undesirable erosion of power of the judiciary and the leg-ture. We have to guard against the onslaught of the executive. My friend

took pains in his speech in Hyderabad to point out that the judicial class is not a good-behaviour class. In his own way he admonishes them for net following the wishes of the executive.

SHRL P. SHIV SHANKER: Will you please quote. ..

SHRI M.S. GURUPADASWAMY: I would like you to go through the en-Mire speech. Your entire thrust...

SHRI P. SHIV SHANKER: Please quote where I have admonished the judiciary for *not* obeying the executive because this is what you have said. Please quote.

SHRI M. S. GURUPADASWAMY; I am lot going back on my word. The whole thrust of your speech, pardon me for saying, is that the judiciary is not lccepting fully. endorsing fully the policy of the Government which you think is progressive. You talk of th^elite class; you talk of the masses. Who created the elite class in this country? Ts it the judiciary? Is if the Parliament? Or is it the executive and its policies? My compIaint against Mr. Shiv Shanker is, you have created the elite class, the monopoly class. You are more responsible than the judiciary and the Parliament. And you blame the judiciary, perhaps in Parliament also! You create a class structure and blame others for trying to interpret the laws which you make here. Judiciary should not be made a scapegoat. He should be very careful. Ite was a judge himself, a lawyer and a judge. I think he was

taking much care when he delivered 'hat speech. That is all T can say. Hpid'd take much care, in his emotions or perhaps in his zeal. He thought the judiciary ig at fault and has got to he mended.

My friend here quoted Roosevelt. Do now what Roosevelt did? In the same way you do it. He said: "Judiciary is reactionary, ig conservative.. It te not radical enough to appreciate- the kopes and aspirations of the people." So he packed the judiciary with his own men. That is how he did it. With a view to packing your own men in the judiciary, you cannot advance this argument. What you ars doing is, you] want to pack judiciary with your own men by saying that the present judiciary is very conservative, is not radical enough. Are you radical? Are you progressive? I want to ask this. I would like the judiciary to be recruited on the basis of merit and talent. And the Constitution is there to pro tect all of us. If there is something wrong in the Constitution, let us amend it. Why blame the judiciary for it?

Sir, it was Montesquieu whom he has quoted in his speech who said long back: "If there is a combination of two wings of government, tyranny is inescapable. And if there is overdoing by one limb of the government, that is the beginning of tyranny". If there is a combination of the executive and the Legislature, it will be a tyranny: if there is a combination of the judiciary and the executive, it will be a tyranny. The third limb will become helpless. Therefore Montos-quieu said that there has got to be separation of powers. This principle has been accepted by our constitution-makers.

For heaven's sake, to protec" the independence and freedom of the judl-ciary, the sanctity of the judicial sys tem, do not employ appointment, pro mo' ion and transfer as instruments to intimidate the judiciary. That you are doing today. Don't do this as an ins trument of power to browbeat the judicial system here. You have done far more harm to the judiciary now than at any time. There is a progres sive erosion of the independence of the judiciary. You tempt them also: After Vetirement you appoint them to various offices. You make them Gov ernors, you make them Lokayukts, you appoint them as chairmen of commis sions of inquiry. They are also humaa hcings. You corrupt them. That is my charge. No retired Judge should he appointed to any commission. You appoint existing Judges as chairman

[Shri Al. S. Gurupadaswamy]

of commissions of inquiry. If you appoint retired judges of the High Courts or the Supreme Court, they would be under your obligation. To that exem your inquiry will be vitiated; it will not be impartial and fair- However, that will be a very bad weapon in your hands to tempt the judiciary. Those people who are retiring will be expecting something from you, from the executive. It is a very dangerous practice to make a Judge, while he is a Judge or, after he retires, look to the executive for various facilities, for various benefits. Tha' ig a wrong practice that you have teen doing.

May I say, therefore, Sir, while endorsing the views of other friends that justice should be cheap and quick, thet you should fill up all the vacancies? There should be automatic fiiling up of vacancies. You should plan it. You are talking so mach about the judiciary. Why don't you talk about yourself, your own performance Why are you waiting so long to fill up the vacancies? For whose benefit? People have not told you not to fill up vacancies. Why do you do that? You should fill up the vacancies in the Supreme Court and the High Courts.

Sir, I entirely agree with my friend here that no transfer of Judges is necessary. It should be accepted by the Government. There should be no transfer of Judges because there is the problem of language and there may be other difficulties involved, like local customs. Local customs they must understand. For some time more —I am not saying it as a principle but as a practical necessity—these transfers have got to be stopped. I think an evaluation is necessary. You have been transferring these Jdlges, particularly the Chief Justices. How they are working and whether the new system is working better than the previous one. I think. Parliament hould be told.

Sir, I do not like to take much of your time. But, I have no quar, ei with the Bill. I go along with the Minister so far as this Bill is concerned. 1 want healthy conditions and facilities to be created for the Judges so that they may function more independen'ly, more freely. Thank you.

श्री केशव राव द शुक्ल (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, आपने मुझे इस विधेयक पर बोलने के लिए समय दिया इसके लिए मैं आपका आभारी हूं । इस उच्च न्यायालय न्यायाधीश (सेवा की शर्तें) (संशोधन) विधेयक, 1987 का मैं समर्थन करता हूं । यह हुत ही साधारण संशोधन है जो हित विवादास्पद नहीं है । इस विधेयक के द्वारा उच्च न्यायालय के उन न्यायाधीशों को जो सरकारी निवास का उपयोग नहीं करते हैं उन्हें आवास भत्ता जो पहले साढ़े बारह परसेंट वेतन का था जिसका मूल अधिनियम की धारा 22(क) की धारा (2) में प्रावधान था उसको इस संशोधन के द्वारा संशोधित करके साढ़े हजार रुपये दिया जा रहा है । महोदय आवास की कितनी विकट समस्या है वह बड़ी गम्भीर समस्या है। यह निर्विवाद है कि हमारे जजेज को ज्यूडिशियरी के अधिकारियों को अपना निष्पक्ष निर्भीक और स्वतन्त्र न्याय देने में उनकी माली हालत आड़े न आवे । इसका उचित ध्यान रखना आवश्यक है और मैं अपने कानून मंत्री जी का धन्यवाद करूंगा कि उन्होंने इसको दृष्टिगत रखते हुए पिछले दिनों एक अमेंडमेंट रखा जजेज के वेतन में वृद्धि की और अब उसमें जो यह खामी रह गयी थी उसको दूर करके आवास की फैसिलिटी दी गयी है । अगर उनको आवास की फैसिलिटी नहीं मिलती है तो उनको जो 12.50 प्रतिशत वेतन पर भत्ता दिया जाता था उसको बढ़ाने के लिए यह विधेयक लाया गया है और उसे 2500 कर दिया गया है । इसमें कोई विवाद का विषय नहीं था। हमारे विरोधी दल के लोगों ने इसका जो विरोध किया है वह सुपरफ्लुअस विरोध जैसा है क्योंकि इस सदन में हर आदमी को समता है कि जो चाहे बोल दे, इसलिए लोगों ने रिमें-

वेंट, इरिलेवेंट सब चीजें कही हैं । मैं उन पर नहीं जाना चाहता हूं । मैं तो केवल अपने को कन्फाइन करूंगा कि यह जो कदम उठाया गया है यह बहुत सुन्दर है, स्वागत योग्य है । यह जुडीशियल आफिसर्स की स्वतंत्रता के लिए, ताकि प्रलोभन के द्वारा या डर के द्वारा या अन्य प्रकार से उस पर आघात न पहुंचे, इस दृष्टि से इस खामी को दूर करने के लिए यह विधेयक लाया गया है । इससे वे निश्चित रहेंगे, उनको आवास की समस्या का सामना नहीं करना पड़ेगा । यह एक बहुत अच्छा कदम है, इससे न्यायाधीशों को राहत मिलेगी और उन्हें न्याय करने में दिक्कत नहीं होगी ।

महोदय, हमारे यहां की जो न्यायालयीय व्यवस्था है वह संविधान के अन्तर्गत एक निष्पक्ष और स्वतंत्र व्यवस्था है और हमारे जजेज ने हमारे जुडीशियल आफिसर्स ने निर्भीकतापूर्वक और समतापूर्वक उसका पालन किया है । वे इसके लिए प्रशंसा के पात्र हैं ।

विरोधी दल के मेरे एक मित्र ने, जो इस समय नहीं हैं, जजेज के ऊपर बड़ा आक्षेप लगाया क्योंकि प्रेशर पड़ता है, मैं उनको बता देना चाहता हूं कि हमारे भारतवर्ष के जजेज ने यह सिद्ध किया है कि वे निर्भीकतापूर्वक निष्पक्षता के साथ और समतापूर्वक अपना जजमेंट देने में, निर्णय देने में किसी प्रकार से कम नहीं हैं और उन्होंने संविधान की हर प्रकार से रक्षा की है । यह उनको मालूम होना चाहिए कि हमारी महान नेता, इंदिरा गांधी जी जब प्रधान मंत्री थीं तो उनके विरुद्ध इलाहाबाद हाईकोर्ट के एक जज ने फैसला दिया था । हमारे मध्य प्रदेश में भूतपूर्व मुख्य मंत्री के विरुद्ध आसवनी काण्ड में एक जज ने फैसला दिया था । अभी कुछ रोज पूर्व आंध्र प्रदेश के जजेज ने वहां के मुख्य मंत्री श्री एन० टी० रामाराव के खिलाफ निर्णय दिया है, अपनी फाईंडिग्स दी हैं । इन सबसे क्या हमारे जजेज की निष्पक्षता और स्वतंत्रता जाहिर नहीं होती है । एन० टी० रामाराव के खिलाफ दे दिया इसी बात के लिए कहें यह ठीक नहीं है । बल्कि पोलिटिकल प्रेशर में पड़े बिना, चाहे कितना बड़ा हो, उच्च पदस्थ हो, उसके पक्ष या विपक्ष में समतापूर्वक निर्णय देते हैं, इसमें दो राय नहीं हैं । इसलिए यह कहना कि पोलिटिकल प्रेशर डाला जाता है, यह बिल्कुल गलत है । मैं इसका विरोध करता हूं । यह असत्य है ।

अंग्रेजी में एक कहावत है कि जस्टिस डिलेड इज जस्टिस डिनाइड । हमारे यहां हाईकोर्ट और सुप्रीम कोर्ट में पेंडिंग केसेज की संख्या बहुत ज्यादा है । इसका कारण क्या है ? हमने यह प्रतिज्ञा ली है कि हम देश की जनता को सस्ता और शीघ्र न्याय देंगे, सुलभ न्याय देंगे । इसके लिए हम कमिटेड हैं । हमने जनता से यह वायदा किया है और इस दिशा में हम कदम उठा रहे हैं लेकिन जो हमारा कदम है वह बहुत मन्द है, मैं इसकी ओर मंत्री जी का ध्यान आकर्षित करूंगा और कहूंगा कि वे इस पर ध्यान दें।

हमारे यहां हाईकोर्ट और सुप्रीम कोर्ट में मुकदमों की संख्या इतनी ज्यादा क्यों बढ़ी है जब हम इसकी गवेषणा करते हैं, विवेचना करते हैं तो हमको ऐसा मालूम होता है कि इस समय हर क्षेत्र में अनेकों कानून बने हैं और बनते जा रहे हैं, इन सबकी व्याख्या करना और उनके अनुसार निर्णय करना ही न्यायालयों का काम है लेकिन यह बहुत बड़ा काम है । इस समय लोग अपने अधिकारों के प्रति ज्यादा सतर्क हो गये हैं, सचेष्ट हो गये हैं, हर आदमी मुकदमा दायर करता है और इसी से मुकदमों की संख्या बढ़ रही है । इससे यह जाहिर होता है कि हमारे देश की जनता को इस न्यायालयीय प्रक्रिया में कितनी आस्था है और वह न्यायालयों से अपने अधिकारों की रक्षा पाने की आशा रखती है, और इसीलिए इतने अधिक मुकदमे हैं, तो इनका निराकरण करना आवश्यक है । किस तरह से हम इनको कम कर सकते हैं, यह विचारणीय विषय है ।

मैं तो आंकड़ों को नहीं जानता, लेकिन उपेन्द्र जी ने तो कम बताये । उन्होंने

[श्री केशव प्रसाद शुक्ल]

बताया कि सुप्रीम कोर्ट में डेढ़ लाख मुकदमे पेंडिंग हैं और हाई कोर्ट में पंद्रह लाख हैं । नारायण स्वामी जी ने बताया कि 30 लाख तो हाई कोर्ट में हैं और दस लाख सुप्रीम कोर्ट में हैं । कुछ भी हो, लेकिन संख्या है, यह निर्विवाद सत्य है कि पेंडिंग केसेज बहुत ज्यादा हो गये हैं ।

तो इनके लिए मैं अपना सुझाव दूंगा कि इनको समाप्त करने के लिए, डिसपोज आफ करने के लिए, मुकदमों का फैसला करने के लिए, इनका निर्णय करने के लिए हमको जजेज की जो खाली जगह हैं, उनको तुरन्त भरना चाहिए, इसमें देरी नहीं करनी चाहिए । इससे लोगों में असंतोष की भावना पैदा होती है ।

तो मैं मंत्री जी से निवेदन करूंगा कि वह इस दिशा में कदम उठायें और जल्दी से जल्दी जितनी वेकेन्सीज हैं, उनको पूरा करें ।

इसके अलावा अब यह वेकेन्सीज कितनी हैं, यह भी मैं सुझाव दूंगा कि इनको भरने की कृपा करें क्योंकि इतने से भी काम नहीं चलेगा । मुकदमों की संख्या को देखते हुए, हमको ज्यादा से ज्यादा जज और उसके लिए उनकी संख्या को भी बढ़ाना पड़ेगा । तो इसलिए संख्या बढ़ाने की भी कोशिश करें जिससे कि यह मुकदमे जितनी जल्दी हो सके, उनको खत्म करें । यह मेरा सुझाव है ।

इसके अलावा, हम देखते हैं कि हमारे यहां बड़ी-बड़ी स्टेट्स हैं । उनके मुकदमों को समाप्त करने की दृष्टि से और लोगों को सुलभ, सस्ता और शीघ्र न्याय दिलाने की दृष्टि से हमारे यहां जितनी खंडपीठें हैं, उनको बढ़ाना पड़ेगा । जसवंत सिंह आयोग रिपोर्ट आ चुकी है । अभी वह स्टेट्स में अध्ययन के लिए भेजी गई है ।

मैं यह निवेदन करूंगा कि हमारे यहां मध्य प्रदेश में हाई कोर्ट जबलपुर में है । उसके पहले हमारे यहां मध्य प्रदेश में चार खंड थे—विंध्य प्रदेश, मध्य भारत, महा कौशल तथा भोपाल, चारों में अलग-अलग हाईकोर्ट थे । जब मध्य प्रदेश हाई कोर्ट बनी, तो हाई कोर्ट जबलपुर में चला गया और यह कहा गया कि और जगहों में हाई कोर्ट नहीं होगा, लेकिन प्रेशर के कारण हाई कोर्ट की ग्वालियर में खंडपीठ रखी गई तथा इन्दौर में खंडपीठ रखी गई । रीवा और शायद महाकौशल को उससे वंचित कर दिया गया । वहां पर एजिटेशन हो रहा है कि हमको वह खंडपीठ दी जाए ।

तो उनकी मांगें जायज हैं । तो मैं कहना चाहूंगा कि रीवा और महा कौशल की बिलासपुर या रायपुर जहां भी उचित समझा जाए, एक खंडपीठ दी जाए जिससे मुकदमों की संख्या कम करने में मदद मिलेगी और वहां पर केसेज जब जायेंगे, तो मुकदमे कम हो जायेंगे ।

इसी तरह इधर उत्तर प्रदेश में खंडपीठ की बात हो रही है । वहां भी खंडपीठ दी जाए । इसमें जो हमने जनता को कमिट किया है, वायदा किया है कि हम जनता को सुलभ और शीघ्र न्याय देंगे, उसमें सहूलियत होगी । इसके लिए यह नहीं है कि ज्यादा जजेज होंगे, तो हमारा पैसा ज्यादा लगेगा । भारत सरकार के पास पैसे की कमी नहीं है कि हम जनता की मांगों को पूरा न करें ।

तो मैं यह सुझाव दूंगा कि माननीय मंत्री जी को कि ज्यादा खंडपीठ कायम करें और ज्यादा से ज्यादा संख्या जजों की कायम करें जिससे मुकदमों का तसफिया हो जाए । इस तरह से यह तसफिया होगा, तो लोगों में एक आस्था बनेगी, जैसा कि मैंने बताया कि लोगों में हमारे न्याय के प्रति एक आस्था बनी है और वही कारण है कि हमारे यहां मुकदमे ज्यादा हैं । तो इसके लिए यह एक तरीका है । अब बहुत से लोगों ने कई चीजें कही हैं, मैं उन पर नहीं जाना चाहता हूं और मुझे यह कहा गया है कि आप बहुत कम बोलिये, तो मैं थोड़े में यह

कहना चाहता हूं कि यह जो विधेयक लाया गया है, यह बहुत ही उत्तम विधेयक है और उसके लिए और भी अगर जजेज के इमाल्युमेंट्स, यानी वेतन, भत्ता वगैरह के लिए जितना ज्यादा से ज्यादा गवर्नमेंट कर सके उतना ही अच्छा है क्योंकि उनको हर तरह से निश्चित होकर जनता को न्याय देने में सहूलियत मिले ।

इन्हीं शब्दों के साथ मैं इस विधेयक का स्वागत करता हूं और समर्थन करता हूं ।

श्री अश्विनी कुमार (बिहार) : माननीय उपसभाध्यक्ष जी..... **(व्यवधान)**

उपसभाध्यक्ष (श्री जगेश देसाई) : इस के पहले बिल के लिये एक घंटा तय किया गया था और उसके मुताबिक उसको खत्म किया. इसके लिये मैं सब मैम्बर्ज का बहुत आभारी हूं । मगर यह बिल कम से कम एक घंटा और... **(व्यवधान)**

श्री सत्य प्रकाश मालवीय : यह कोई जरूरी तो नहीं है कि यह आज ही पास हो । इसको टलवा दीजिये अगले सैशन के लिये ।

श्री राम अवधेश सिंह (बिहार) : यह इतना महत्वपूर्ण बिल है कि शायद कोई इतना महत्वपूर्ण बिल इस सैशन में आया नहीं ।... **व्यवधान** इस पर तो दो दिन बहस होनी चाहिये ।

उपसभाध्यक्ष (श्री जगेश देसाई) : वह बिजनेस एडवाइजरी कमेटी तय करती है । दो घंटे तय किया है उसमें आप को पार्टी के भी प्रतिनिधि थे । आप ऐसी बात मत करें ।

श्री राम अवधेश सिंह : आप कुर्सी में हैं तो आप थोड़ा बढ़ा दीजिये । हम सब लोग आपका धन्यवाद करेंगे ।

श्री अश्विनी कुमार : माननीय उपसभाध्यक्ष महोदय मैं आपका बड़ा विशेष स्नेहपात्र हूं कि जब भी मैं बोलने के लिये खड़ा होता हूं तभी आप टाइम की घंटी सुना देते हैं । मैं आपका आभारी हूं कि आपका मेरे लिये स्नेह है लेकिन इतना मैं कहूंगा कि मुझे अपनी बात कहने का अवसर दिया जाये । सबसे पहले मैं निवेदन करना चाहूंगा कि अभी मेरे पूर्व के माननीय सदस्य जिन्होंने अपना भाषण दिया उन्होंने भाषण में एक बात कही है कि विरोधी दल के लोग "बक" रहे थे । यह "बक" पार्लियामेन्ट्री शब्द है या नहीं है इसको आप जरा देख लीजिये । अगर यह "बकना" शब्द अनपार्लियामेन्ट्री हो तो इसको निकाल दीजिये ?

उपसभाध्यक्ष (श्री जगेश देसाई) : ऐसा नहीं बोला ।

श्री अश्विनी कुमार : ऐसे बोला है और मैंने इसको नोट किया है । जो अभी मा० सदस्य बोल रहे थे कि विरोधी दल के सदस्य बक रहे थे । आप रिकार्ड देखिए । मैं रिकार्ड देखने के लिये कह रहा हूं ?

THE VICE-CHAIRMAN (Shri Jagesh Desai); I don't think he has said it. If he has said like that then it will be expunged.

श्री अश्विनी कुमार : मैंने तो निवेदन किया है । उस समय मैंने उनको रोका नहीं ।

उपसभाध्यक्ष (श्री जगेश देसाई) : शुक्ल जी ऐसा बोलने वाले हैं ही नहीं इसलिये मैं नहीं मानता ।... **(व्यवधान)** ठीक है अगर होगा तो निकाल देंगे ।

श्री अश्विनी कुमार : उपसभाध्यक्ष महोदय जो हमारे विधि मंत्री बिल लाये हैं उसमें कोई दो मत नहीं हैं कि इस माध्यम से उन्होंने एक अवसर प्रदान किया है कि विधि व्यवस्था पर चर्चा करके हम अपने विचार व्यक्त कर सकें । पता नहीं योजनानुसार या बिना योजनानुसार उन्होंने स्वय बहुत अच्छा भाषण देकर विधि व्यवस्था पर विचार करने का अवसर दे दिया है जिसकी सब माननीय सदस्यों ने चर्चा की हैं वह उन्होंने थ्योरी दे

[श्री अश्विनी कुमार]

दी है जिसके आधार पर उनके विचार सबको पता लगे हैं कि उनको क्या इच्छायें हैं क्या आकांक्षायें हैं और उसको लेकर एक चर्चा प्रारम्भ हो गई है। जो उनको सुविधायें दी जा रही हैं उसका मैं समर्थन करता हूं परन्तु जब कभी बहुत चर्चा हो रही थी कि न्यायपालिका में बहुत अधिक समय लग रहा है। मैं आपसे यह निवेदन करना चाहूंगा कि पिछले साल जजों के वेतन वृद्धि का बिल लाया गया था और इस साल किराया वृद्धि का ले आये, यह क्या कार्यपालिका की क्षमता के उपर विश्लेषण नहीं है कि 6 महीने पहले वह क्यों नहीं सोचती है कि यह काम कर सकते हैं और सदन का इतना समय क्यों बर्बाद किया गया इसके लिये कि फिर से तीन घंटे चर्चा हो।? आप कह रहे है कि चर्चा क्यों हो रही है ? अगर उसी समय यह बात आ जाती तो अच्छा रहता। मैं केवल इतना ही जिस्ट देना चाहता हूं कि मंत्री महोदय जरा अपनी कार्यपालिका की क्षमता देखें कि वह इस प्रकार से कितनी सक्षम है ? अभी चर्चा हो रही थी कि ला कोर्ट में केसेज में विलम्ब हो रहा है और अभी जो माननीय सदस्य बोले उन्होंने कहा कि यह हमारी स्वतन्त्र न्याय-पालिका है इसलिये लोग वहां मुकदमें ले जा रहे हैं। उनको उसके प्रति विश्वास है। मैं उनकी बात का समर्थन करते हुए दूसरे ढंग से अपनी बात कहना चाहूंगा कि आखिर कोई भी व्यक्ति न्यायपालिका के पास क्यों जाता है उस समय जाता है जबकि कार्य-पालिका उसके ऊपर अन्याय करती है एग्जीक्यूटिव उसके ऊपर आघात करती है और एस०पी० डी एम० या और लोग उसकी बात नहीं सुनते हैं और वह उनसे अपने बचाव के लिये वहां जाता है। केसेज ज्यादा बढ़ते जा रहे हैं उसमें एक लक्षण यह भी है मंत्री महोदय को सोचना पड़ेगा कि क्या देश में जहां-जहां उनकी कार्यपालिका है, पुलिस है और भिन्न-भिन्न डिपार्टमेंन्ट हैं उनके अत्याचार, अनाचार और व्याभिचार तो बढ़ते नहीं चले जा रहे हैं ? मैं निश्चित कहूंगा कि उनके कारनामों के रिएक्शन में लोग कोर्ट में जाते हैं। आज कोर्ट में जाना बड़ा सरल है नहीं है काफी मंहगा सौदा है। यह तो अभी सुप्रीम कोर्ट ने पब्लिक पटीशन लेकर कुछ थोड़ा सा सरल किया है। परन्तु आज लोग मुसीबत से कोर्ट में जाते हैं। विशेष उल्लेख में बहुत से केसेज आते हैं कि इस प्रकार के अनाचार हो रहे हैं, अत्याचार हो रहे हैं। लोग क्या करें? लोग हमारे पास आते हैं और हम सदन में रखकर अपनी बात खत्म करना चाहते हैं। परन्तु इसी के साथ मैं कहूंगा कि जजेज के बारे में सोच रहे हैं, न्यायपालिका के बारे में सोच रहे हैं तो सरकार जो आज की कोर्ट फीस है, जो कोर्ट के प्रोसीजर हैं, जो उसके सारे पैरा-फर्नेलिया हैं, उसका सरलीकरण करके कुछ काम करना चाहेगी जिससे कि न्याय-पालिका का अच्छा काम हो सके, इसकी ओर मैं ध्यान आकर्षित करना चाहूंगा। दूसरी बात की बहुत चर्चा हो रही है कि केसेज बहुत पैंडिग हैं। मेरे प्रश्न के उत्तर में मुझे जो उत्तर मिला उसमें इस सदन में बताया गया कि लगभग 15 लाख केसेज हाई कोर्ट में और 1 लाख 70 हजार केसेज सुप्रीम कोर्ट में पेंडिग हैं और इन पेंडिग के साथ ही एक और बड़ी विशेषता है।

उपसभाध्यक्ष महोदय, कि पांच साल से अधिक निलम्बित केसेज लगभग 2 लाख 27 हजार हैं, दस साल से अधिक निलम्बित केसेज लगभग 1 लाख हैं और अब केसेज बढ़ गये हैं जनसंख्या बढ़ गई है मुकदमें बढ़ गये हैं, जजों की संख्या बढ़ाई जाये। पिछले साल सरकार ने सुप्रीम कोर्ट के जजों की संख्या बढ़ाई, परन्तु बढ़ाने के बाद दुर्भाग्य का विषय है कि हमारे देश के अन्दर इस प्रकार के दस जज नहीं मिले हैं, 10 वकील नहीं मिले हैं, हाई कोर्ट के जज न

मिले हैं, जिनको सुप्रीमकोर्ट का जज नियुक्त किया जा सके ।

श्री सत्य प्रकाश मालवीय : मिले हैं, लेकिन पोलिटिकल फ्लिोसफी के नहीं हैं . . .

श्री अश्विनी कुमार : अभी मंत्री महोदय सारा वर्णन कर रहे थे कि जज की नियुक्ति का क्या प्रोसिजर है, स्टेट हाईकोर्ट के चीफ जस्टिस से प्रारम्भ होकर चीफ मिनिस्टर से, गवर्नर से ला-मिनिस्टर के पास केस आता है । मैं कहना चाहूंगा मंत्री महोदय से, मेरी जानकारी के हिसाब से आज 43 जगह खाली हैं, हाईकोर्ट में, सुप्रीम कोर्ट में, उसमें से पांच जगह सन् 1982 से खाली हैं, क्या पांच साल में पांच जजों की नियुक्ति आन्ध्र प्रदेश में संभव नहीं हो सकी, सन् 1984 से दो जज गुजरात में बहाल नहीं हो सके, जैसी मेरी जानकारी है । 1984 से चार जज इलाहाबाद हाईकोर्ट के नियुक्त नहीं हो सके हैं । आन्ध्र प्रदेश के बारे में तो कहा जा सकता है कि वहां विरोधी दल की सरकार है, लेकिन गुजरात और उत्तर प्रदेश में तो उसी दल की सरकार है, जिसकी केन्द्र में सरकार है, तो इस प्रकार से गुजरात और पंजाब में भी 1985 से जजों की जगह खाली है । महोदय, वास्तव में इसमें सोचने का विषय है और मैं मंत्री महोदय से कहना चाहूंगा कि अपने गिरेबान् में डालकर कार्यपालिका जो इसकी नियुक्ति करने का महत्वपूर्ण अंग है, उसको देखे ।

महोदय, जैसा मेरे मित्रों ने कहा, कम्युटेड जजेज की बात हो रही थी कि उन्हीं की नियुक्ति की जायेगी जो हमारी विचार धारा के हैं । कौन सी विचारधारा, मैं प्रश्न पूछना चाहता हूं, विचारधारा—कांग्रेस पार्टी की विचारधारा, तेलुगु-देशम की विचार-धारा, सी पी एम की विचारधारा, बी० जे० पी० की विचारधारा या विचारधारा भारत के कंस्टीट्शन की ?

दूसरा, हमारे प्रदेशों में और केन्द्र में भिन्न-भिन्न दलों की सरकार है, उनकी थोड़ी-बहुत आइडोलोजी डिफरेण्ट है । आज सबेरे ही एक माननीय सदस्य ने आरोप लगाया कि पश्चिमी बंगाल में जो नियुक्तियां हो रही हैं, कम्युटेड के आधार पर हो रही हैं, वह गलत है । क्या केन्द्र सरकार इस प्रकार के जजों की नियुक्तियों में पक्षपात करके अन्य राज्यों को भी प्रोत्साहन देगी कि सब अपने-अपने दलों के लोगों को आगे करें । इसलिये मेरा कहना है कि केन्द्र की सरकार बड़ी है, प्रधान मंत्री का एक बड़ा विशेष स्थान है और वह जो परम्परायें, जो आदर्श यहां से निर्मित करेंगे, वह सारे देश में जायेंगे । इसलिये जो एक संविधान के प्रति है उसके नियमानुसार करें ।

अगली बात मैं यह कहूंगा कि कब कौन जज रिटायर कर रहा है, इसकी पहले से जानकारी होती है कि अमुक-अमुक दिन को वह रिटायर कर रहा है । इसी साल अभी और भी जज रिटायर कर रहे हैं 1988 में, तो इसके बारे में पहले से क्यों नहीं सोच-विचार कर रखते कि इतने जज रिटायर हो रहे हैं, हम उनके लिये पैनल बना कर रखें । जैसे-जैसे कोई जज रिटायर होता जाये, दूसरा आप नियुक्त कर सकते हैं । ऐसी व्यवस्था आप रख सकते हैं कि नहीं रख सकते । यह मैं जानना चाहूंगा । मेरा सुझाव है कि पहले से अगर पैनल रहे, तो उससे आसानी रहेगी, पुरानी नियुक्तियों को तो आप करें; लेकिन आगे जो जजों की जगह खाली हो रही हैं, उसके लिये विचार करके पहले से पैनल रखें ताकि जगह खाली होते ही उनमें से नियुक्ति की जा सकती है ।

महोदय, खाली नियुक्ति का प्रश्न नहीं है, कुछ जगह जो एक्टिंग जज हैं । राजस्थान में देख लीजिये, एक्टिंग चीफ जस्टिस दो साल से वहां है, न तो उनको चीफ जस्टिस का स्थान दिया जा रहा है और न नियुक्ति की जा रही है ।

[श्री अश्विनी कुमार]

एक और नई परम्परा पिछले कुछ सालों से चली है, चीफ जस्टिस के ट्रांसफर की, जिससे भिन्न-भिन्न राज्यों के चीफ जस्टिस दूसरे राज्यों में जाते हैं। जहां तक मेरी जानकारी है राजस्थान का कोई भी चीफ जस्टिस किसी अन्य राज्य में नहीं है, बल्कि राजस्थान में भी एक्टिंग चीफ जस्टिस काम कर रहा है, उनको जगह नहीं दी जा रही है। मेरा यह कहना है कि इसके बारे में विचार करना जरूरी है, यह विचार का विषय है। इसके क्या कारण हैं, यह मंत्री महोदय बताने का प्रयत्न करेंगे तो बड़ी कृपा होगी।

यह चीजें जब तक आप ठीक नहीं करेंगे इसके स्तर को नहीं उठाएंगे काम नहीं चलेगा। आज जुडिशरी के बारे में कल्पना है कि यह एक स्वतंत्र न्यायपालिका है। परन्तु जो व्यवहार में देखा जा रहा है, उसमें बहुत सी चीजें नीचे आ रही हैं और जैसा मैंने पहले कहा कि मंत्री महोदय ने अपने हैदराबाद के भाषण में जुडिशरी के ऊपर बहुत कुछ बात कही मैं उन्हीं का एक उदाहरण देना चाहता हूं। उन्होंने जमींदारी एबोलीशन बिल की बात कही और आरोप यह लगाया कि जमींदारी बिल को न्यायपालिका ने रद्द कर दिया और उसी में उन्हीं के शब्दानुसार यह है कि जब दोबारा बिल पास करने की बात आई तो उन्होंने स्वयं स्वीकार किया कि, "वी हेड लास्ट द पोलिटिकल बिल टू पास।" यह किसका दोष है और कौनसी बाधाएं आएंगी यह कल्पना होनी चाहिए। माननीय शिवशंकर सरीखे व्यक्ति ला मिनिस्टर हैं। एक-से-एक बड़े विद्वान जजेज रहे हैं जिन्हें कि सब प्रकार का अनुभव है। साथ ही ला मिनिस्ट्री में बड़े-बड़े विद्वान जजेज बैठे हैं, उनको अगर कल्पना नहीं है तो मैं कहना चाहूंगा कि उनको सोचना चाहिए कि इसमें से क्या लेकुना निकाल सकते हैं। मैं कहना चाहता हूं कि कानून जल्दी में बनते हैं और फिर न्यायपालिका में जाते हैं। वहां से नीचे भेजे जाते हैं और फिर संशोधन होते हैं। इसलिए यह सोच-विचार कर किया जाना चाहिए। परन्तु उधर सोचा-विचारा नहीं जा रहा है। अभी मेरे एक मित्र महोदय ने कहा कि जज जो रिटायर हो जाते हैं हम उनको प्रोत्साहन देकर, प्रलोभन देकर न्याय-पालिका को भ्रष्ट बनाने का काम कर रहे हैं। मैं यह नहीं जानता कि यू० एस० एस० आर० में कौनसा न्यायपालिका का सिस्टम है। वह सिस्टम तो यहां लागू नहीं हो सकता। हमारे यहां तो इंग्लैंड और अमेरिका हर दृष्टि से आदर्श माने जाते हैं। जहां तक मुझे जानकारी है अमेरिका के अन्दर अगर कोई व्यक्ति 10 साल जज रह जाता है तो उसके बाद उसे कोई पद नहीं दिया जाता और उसको जितनी सेलरी मिलती थी उतनी पेंशन मिलती है। मंत्री महोदय कमिटेड जूडिशरी की बात कर रहे हैं। मैं तो कह रहा हूं कि जजेज को इलेक्शन कमीशन का चैयरमैन बनाकर, भिन्न-भिन्न पोस्ट्स देकर, गवर्नर बनाकर जो भेजा जा रहा है, यह जजेज को भ्रष्ट करने का तरीका है। उसके बाद हम कहते हैं कि भ्रष्टा-चार फैल रहा है।

उपसभाध्यक्ष महोदय (श्री जागेश देसाई) : अब खत्म कीजिए। ग्यारह मिनट हो गए हैं।

श्री अश्विनी कुमार : मैं एक-दो मिनिट में खत्म कर दूंगा। मैं एक-दो महत्व के विषयों पर और बोलूंगा। मैं एक महत्व के विषय की ओर आपका ध्यान आकर्षित करना चाहूंगा। मुझे वे हाईकोर्ट्स, विशेषकर पटना हाईकोर्ट का अनुभव है कि जो जजेज वहां नियुक्त होते हैं उन्हीं के बेटे, भाई, भतीजे वहां आकर वकालत करते हैं। तो जब कि को लेकर वे आते हैं तो तुरन्त जमा हो जाएगी या रिट दायर हो जाएगी तो मेरा सुझाव यह है कि जब सरकार सारे विषय पर विचार कर रही है जिनके बेटे, भाई जिस हाईकोर्ट में वकालत करते हैं उसके बाहर ऐसे जजेज नियुक्त करने के बारे में आप सोचेंगे क्योंकि यह एक भयंकर भ्रष्टाचार

तरीका है और उसमें से जज के पास जाता है कि नहीं, यह कहना तो कठिन है परन्तु उनके बेटे जो कल ला कालेज से आए हैं आज उनकी हजारों, लाखों की प्रैक्टिस शुरू हो जाती है । इस तरह उनकी प्रैक्टिस जमने लगती है और कल को दो साल, पांच साल बाद जब आप जजेज के लिए नाम खोजना शुरू करते हैं तो वही आते हैं क्योंकि उनका बाप जज रहा, उनका चाचा जज रहा । जिन्होंने कि बाप के नाम भतीजे के नाम पर जमानत कराकर लाखों रुपए कमाए वह फिर जज बन जाते हैं । कल को वे जज बनकर क्या करेंगे । उनका क्या सिद्धांत होगा । उसके लिए शिवशंकर जी ने कहा कि हमने ट्रांसफर आफ जजेज कर दिया है । परन्तु ट्रांसफर आफ जजेज के बारे में जैसा कि मेरे अन्य मित्रों ने कहा भावना उनकी अच्छी रही होगी परन्तु सरकार उसे अपने हाथ में धमकाने के लिए उनसे अपने काम कराने के लिए एक डंडा बनाकर रखती है ।

अन्त में मैं इतना ही कहूंगा कि जजेज के लिए जो कुछ किया जा रहा है वह उचित है ?

श्री पी० शिवशंकर : आपने रामायण की सारी कथा कह दी ?

श्री अश्विनी कुमार : रामायण तो आपने टी० वी० पर ला दी है । आपने हैदराबाद में रामायण शुरू की हमने तो कमेंटरी की है । उसमें भी हम ज्यादा नहीं कर रहे हैं । मेरा तो इतना ही कहना है कि सरकार के विचार में यह एक अच्छी कल्पना आ गयी है । न्यायपालिका को स्वतंत्र रहना चाहिए । कल को सरकारें बदल सकती हैं । देश में जैसा परिवर्तन आ रहा है उसमें अगर न्यायपालिका निष्पक्ष और स्वतंत्र रहेगी तो कोई भी सरकार बदले, कोई भी दल मेजारिटी में आये, न्यायपालिका एक नियंत्रित रूप में देश को आगे ले जायगी । मैं निवेदन करना चाहूंगा कि आज का जो सत्तारूढ़ दल है वह चाहे जब तक सरकार में बना रहे लेकिन कालांतर में देश की परिस्थितियों में परिवर्तन आने वाला है और बहुत से राज्यों में परिवर्तन आ गया है । आज देश के 14 राज्यों में आपकी सरकार नहीं है । तो क्या यह देश के लिये उचित नहीं होगा कि हम ऐसी परंपरा डाल कर जायें कि आने वाली पीढ़ी ऐसा न कहे कि हमने देश को आगे ले जाने का मार्ग अवरुद्ध कर दिया है ।

We should have 'a committed judiciary, that is. a judiciary committed not part) a but committed to the Consi' and to tion the integrity and welfare of dia.

इन शब्दों के साथ आपको फिर धन्यवाद देता हूं ।

उपसभाध्यक्ष (श्री जगेश देसाई) : राम अवधेश सिंह जी, अब आप बोलेंगे । और मैं 7 मिनट के बाद घंटी बजा दूंगा । उसके बाद भी आप तीन मिनट बोल सकते हैं । आपकी पार्टी का पूरा टाइम केवल 3 मिनट का है, इसलिये दस मिनट से ज्यादा मैं आपको आधा सेकिंड भी नहीं दूंगा । मैं यह बात अभी से बोल देता हूं ।

श्री राम अवधेश सिंह : माननीय उपसभाध्यक्ष जी, इस बिल के माध्यम से हमें भारत की मौजूदा न्यायपालिका के स्वरूप, उसके कार्य करने की विधि के बारे में इस सदन में बहस करने का मौका प्राप्त हुआ है और मैं समझता हूं कि अब यह बहुत उचित समय है बहस करने का । अभी तक जितनी बहस हुई है उसको मैंने बहुत ध्यान से सुना है । बहस का सारा तत्व यह था कि न्यायपालिका निष्पक्ष और निर्भीक हो । इसी पक्ष पर बहस हुई । लेकिन उसके निष्पक्ष बनाने के लिये कोई ठोस, कारगर बात भारतीय समाज व्यवस्था के संदर्भ में नहीं हुई है । कैसे यह निष्पक्ष रहेगी इस बात को देखना है । यहां हिन्दुस्तान में जज हो या चीफ जस्टिस हो या चीफ सेक्रेटरी हो या लेजिस्लेटर हो या मंत्री

[श्री राम अवधेश सिंह]

हो, वह पैदा होता है जाति में, बढ़ता है जाति में, सोता है जाति में, मरता है जाति में और मरने के बाद भी रहता है जाति में । यह एक सामाजिक सच्चाई है । अब जिस तरह से सतही बहस हुई उसमें सैद्धान्तिक बात कि न्यायपालिका कार्यपालिका और विधायिका के बीच में संतुलन रहे, तो यह नहीं हो सकता है जब तक कि इस बात के लिये कोई ठोस आधार नहीं तैयार किया जायेगा । मैं बहुत दुख के साथ कहना चाहता हूं कि संविधान की धारा 124 जिसमें सर्वोच्च न्यायालय के जजों की नियुक्ति का प्रावधान है और जो शर्तें हैं और धारा 217 में हाईकोर्ट के जजों की नियुक्ति का प्रावधान है और जो शर्तें हैं और धारा 233 में एडीशनल सेशन जजों की नियुक्ति का प्रावधान है, इन तीन संविधान की धाराओं का भरपूर दुरुपयोग किया गया और ऐसा बनाया गया है कि एक साजिश व्यवस्था की और ही न्यायपालिका उन्मुख रहे । कोई प्रगतिशील काम सरकार करना चाहती है तो इस तरह के जज बैठे हुए हैं न्यायपालिका में कि जैसे सांप कुंडली मारे बैठा रहता है और किसी को घुसने नहीं देता । वह घर की रखवाली करता है तो उसी तरह से न्यायपालिका में सांप की तरह से लोग बैठे हुए हैं जो बाहर से किसी को उसमें घुसने नहीं देना चाहते हैं । मैं दावे के साथ कहना चाहता हूं कि भारत सरकार जांच करे और गृह मंत्रालय और विधि मंत्रालय जांच कराये कि कितने परिवारों का एकाधिकार न्यायपालिका पर है हाईकोर्ट के जजों के बारे में और सुप्रीम कोर्ट के जजों के बारे में । 300 परिवार इस देश में है जिसका पूरा एकाधिकार न्यायपालिका पर है और वे जैसा चाहते हैं, वैसा कराते हैं ।

महोदय, मुझे बहुत दुख के साथ कहना पड़ता है कि हमारे मित्र श्री अश्वनी जी ने बहुत सही कहा....

उपसभाध्यक्ष (श्री जगेश देसाई) : **मगर आपके विचारों और उनके विचारों में बहुत फर्क है ।**

श्री राम अवधेश सिंह : बहुत कुछ विचार मिलते हैं हमारे । मैं आपको बताना चाहता हूं कि न्याय पाने की आजादी है, लेकिन क्या हो रहा है कि वहां पर कुछ ही खानदान के लोगों की नियुक्तियां हो रही हैं । जो एक बार जज बन जाएगा तो उसका साला, उसके रिश्तेदार, उसके मित्र भी बनेंगे । दर्द क्यों होता है कि एक ही जिले में 10 साल हाईकोर्ट में कोई प्रेक्टिस करे तो वह हाईकोर्ट जज बन सकता है । 10 वर्ष हाईकोर्ट में प्रेक्टिस करेगा तो या सुप्रीम कोर्ट में करेगा तो सुप्रीम कोर्ट का जज बन जाएगा। 233 धारा के मुताबिक कोई लोवर कोर्ट में करेगा तो ऐडीशनल सेशन जज बन सकता है । सबसे बड़ी खामी इसमें यह है कि न्यायपालिका में चुनाव के लिए प्रतियोगिता की भी व्यवस्था है लेकिन वह केवल जुडिशल मजिस्ट्रेसी के लिए है मुंसिफ के लिए है । आप सिद्धान्ततः यह नहीं कह सकते हैं कि न्यायपालिका के चुनाव में प्रतियोगिता नहीं है । जहां से फांसी देने का अधिकार न्यायपालिका को मिलता है वहां भी पैरवी पर नियुक्ति होती है । मैं ऐसे लोगों को जानता हूं । चार दोस्त थे, वे एक साथ रहते थे एक साथ प्रैक्टिस करते थे, एक साथ वे जुडिशल मजिस्ट्रेट की परीक्षा में बैठे । एक जो उनमें सबसे तेज था वह हरिजन था, वह भी उसमें बैठा और वह मुंसिफ मजिस्ट्रेट हो गया । दूसरा जो था सत्ता के गलियारे में और न्यायपालिका के गलियारे में था । जिस अनुपात में उसकी पैरवी थी, उसी अनुपात में उनको जगह मिलनी थी । जिसकी थोड़ी पैरवी कम थी, दूसरे से वह ऐडीशनल सेशन जज बन गया । जो तेज था, जिसके लिए वे कहते हैं कि 7 वर्ष की पैरवी होनी चाहिए, जो यूयर आनर सर करता रहा वह उसके सिर पर आकर ऐडीशनल जज बन गया । तीसरा आदमी सुप्रीम कोर्ट का जज बन गया । यह है आपकी नियुक्ति की व्यवस्था । इसमें आप अपेक्षा कर सकते हैं कि न्यायपालिका स्वतंत्र रहेगी ? नहीं रह सकती है । इसमें समाज के कमजोर तबके का कोई प्रतिनिधित्व नहीं है । इस पर क्या सरकार नहीं सोचेगी ?

महोदय मैं इस सदन के माध्यम से अपने देश के नौजवान प्रधान मंत्री को कहना चाहता हूं कि न्यायपालिका में भी जनता अपना चेहरा देखना चाहती है । जैसे सरकार एक दर्पण है उसी प्रकार से विधायिका भी दर्पण है जिसमें जनता अपना प्रतिनिधित्व देखना चाहती है उसी प्रकार से न्यायपालिका में भी जनता अपना प्रतिनिधि देखना चाहती है । मैं पूछना चाहता हूं मंत्री जी से वे पूरे देश में जितने हाईकोर्ट के जज हैं उनमें बैक-वर्ड क्लास के लोग कितने हैं यह क्या आप बताएंगे उसमें आदिवासी कितने हैं, हरिजन कितने हैं, माइनारिटीज के लोग कितने हैं, महिलाएं कितनी हैं यह बताएं । हमारे जो प्रधान मंत्री हैं उन तक आप हमारी बात को पहुंचाएं हम दर्द से बोल रहे हैं । अगर हम लोगों की बात नहीं सुनी गई तो क्या होगा कितना असन्तोष होगा यह आप जानें ।

श्रीमन् पटना हाईकोर्ट के चीफ जस्टिस के बी० ए० सिंह थे । वहां क्या होता था कि सारी जातियों का जमाव होता था । रात में तय होता था कि किसमें क्या फैसला करना था । एकदम साधारण मजिस्ट्रेट के स्तर से चीफ जस्टिस का स्तर गिरा था । मुझको 31 अगस्त, 1982 को और 9 फरवरी, 1983 को पटना हाईकोर्ट के सामने धरना देना पड़ा और कहना पड़ा कि इसको बदलो । भारत सरकार को हमने मेमोरेंडम दिया । उस समय संयोग से माननीय मंत्री जी थे तो उनकी ट्रांसफर हुई और राहत मिली हमको । पूरे सूबे को लगा कि कुछ राहत मिल गयी । ऐसे जो चीफ जस्टिस होंगे तो उनके बारे में क्या होगा ? डा० लोहिया की तरह से निर्भीक हों निष्पक्ष हों यही हम चाहते हैं और सब वर्गों का उसमें प्रतिनिधित्व हो । मैं यह कहता हूं कि इस समय जो 440 जजेज हैं उसमें सब के सब कुछ को छोड़ कर ऊंची जाति के हैं । 55 फीसदी तो खाली ब्राह्मण ही हैं । एक जाति है जिनकी संख्या साढ़े तीन फीसदी है । (समय की घंटी)

उपसभाध्यक्ष (श्री जगेश देसाई) : आपके दस मिनट हो गये । अब आप बन्द करिये ।

श्री राम अवधेश सिंह : तीन मिनट और दे दीजिए ।

उपसभाध्यक्ष (श्री जगेश देसाई) : एक मिनट से ज्यादा नहीं । इसी में आप खत्म करिये ।

श्री राम अवधेश सिंह : मैंने ब्राह्मण शब्द कह दिया क्या इसलिए आपने...

उपसभाध्यक्ष (श्री जगेश देसाई) : मैं पहले हिन्दुस्तानी हूं । न ब्राह्मण हूं और न कुछ और ।

श्री राम अवधेश सिंह : सब हिन्दुस्तानी हैं लेकिन मरने के बाद तक अपनी जाति में रहते हैं यह दुर्भाग्य है । मैं कोई जाति में नहीं हूं । मैं हिन्दुस्तानी हूं । मैंने अपने लड़के का नाम कश्मीर अली रखा है दूसरे लड़के का नाम कृष्ण कबीर रखा है और लड़की का नाम जयश्री नूर रखा है । मैं किसी धर्म को नहीं मानता किसी जाति को नहीं मानता, भगवान को नहीं मानता । (व्यवधान).. (समय की घंटी) मैं एक सुझाव देना चाहता हूं ।

उपसभाध्यक्ष (श्री जगेश देसाई) : आपका टाइम खत्म हो गया ।

श्री राम अवधेश सिंह : एक मिनट में अपनी बात खत्म कर दूंगा ।

मेरा पहला सुझाव यह है कि अखिल भारतीय न्यायिक सेवा की स्थापना की जाये ताकि प्रतियोगिता के आधार पर जजों की नियुक्ति की जाये । साथ ही यह भी हो कि वह 10 साल तक प्रेक्टिस में रहा हो तभी वह प्रतियोगिता में बैठ सकता है ।

दूसरे यह कि जनसंख्या के आधार पर अगर यह सम्भव न हो तो कमसे कम हर वर्ग का प्रतिनिधित्व उसमें हो ।

[श्री राम अवधेय सिंह]

पिछड़े वर्ग का प्रतिनिधित्व हो। 50 जगह हाई कोर्ट में खाली हैं तो उसमें कम से कम 40 इनमें से भरी जानी चाहिये। पटना में 13 जजेज की जगह खाली हैं। मैं मांग करता हूं कि 13 में से कम से कम 9 जगह पिछड़े वर्ग में से, हरिजन जाति के लोगों में से बहाल की जायें

तीसरे यह कहना चाहता हूं कि हर हालत में मुख्य न्यायाधीश उस राज्य का नहीं होना चाहिए दूसरे राज्य का होना चाहिए। दो-तिहाई जज हमेशा अपने राज्य के नहीं होने चाहिएं। अगर वे दूसरे राज्य के होंगे तो जातपांत नहीं हो पायेगा।

चौथे यह कि जजों की संख्या दुगनी बढ़ाई जाये। जब 10 लाख से ऊपर हाई कोर्ट में केसेज पैंडिंग हैं और एक लाख केसेज सुप्रीम कोर्ट में पैंडिंग हैं तो मैं चाहूंगा कि जब तक जजों की संख्या दुगनी नहीं बढ़ाई जायेगी तब तक ये पैंडिंग केसेज कम्प्लीट नहीं होंगे। संविधान की दुहाई मत दीजिए। अगर पिछड़े वर्गों को उचित हिस्सा नहीं मिला तो संविधान की रक्षा के लिए संविधान को जलाने का काम वह करेंगे और उसमें हमारे जैसे लोग शिरकत करेंगे।

SHRI DHARAM CHANDER PRASHANT (Jammu and Kashmir): Mr. Vice-Chairman, Sir, I rise in support of this Bill which is a very simple Bill, about enhancement of emoluments of Judges. There can be no two opinions about this. But, Sir. I have some points to raise. There is shortage of High Court Judges. It has resulted in 14.83 lakh cases pending in the High Courts and 163 lakh cases pending in the Supreme Court. It is a huge number. It is because of shortage of Judges in the High Court. The case of a man who goes to the court to demand justice lingers on for 10 years or more. He spends thousands and thousands of rupees in litigation. He knocks at the doors cf the courts. But justice takes so long that he withdraws his case. The case is filed.

Secondly a High Court Judge has to dispose of election petition- also. There are cases when a person files an election petition. His petition goes on for 5 years. In the meantime, the Assembly ig dissolved and whether he wins or loses the case does not matter. The case remains in the court and he has spent So much of money , It is because a High Court Judge disposes of not only election petition, nut other cases also that election petition lingers on. I suggest that when a High Court Judge disposes of an election petition, his duty should be confined to the election petitions only. He should not deal with other cas this way, the disposal of election petitions will be quick and speedy

There is one legal[1] directive a Judge. Don't punish those whe have not committed crimes though you may have to acquit those who have committed crimes. But we have seen that those who have not committed mes have been punished. That is a lo in the Judicial system which should be plugged. If you don't plug this loophole, then people will not get justice.

Sir, in the lower courts also *Use* situation is very deplorable. Judges are appointed by the Chief Justice. But there is interference by the State Governments with the result that those who do not have any merit are appointed Judges. A Judge should be appointed on merit alone. His performance as a lawyer at least for 10 years should be perfe: ft man who has just passed LLB and is immediately appointed as a fudge will not perform his duties perfedjjly according to the law. A lawyer who works efficiently for 10 years as an advocate should be given a chance to work as a Judge in the High Courts Or in the lower courts. Justice should not be delayed. Justice should be done speedily to the persons who approach the courts. if they are

not given justice, then their confidence in the judicial system will be shaken. Thank you.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Gopalsamy. Only 5 minutes.

SHRI V. GOPALSAMY: Mr. Vice-Chairman, Sir. i know that the tims at my disposal is very short, I will confine myself to the Bill. Originally the House Rent Allowance was 12-1/2 ,per cent of the basic *pay.* At that time the basic pay was Rs. 35O0/-. Now the basic pay of Ihe High Court Judges including other perquisites is Rs. 8000/- and above. It has been raised from Rs. 3500 to Rs. 8000. On that basis, the House Rent Allowance comes to about Rs. 100O.

Sir, now the Government have introduced a new Bill under which the house rent allowance is raised to a consolidated sum of Rs. 2,500. It is understood that this rise to a consolidated sum of Rs. 2,500 will be paid to the Judges who are occupying their own premises from the date On which this condition is notified. Since the pay has been raised much earlier and given effect to from lst April, 1986, it is requested that the house-rent allowance of Rs. 2,500 also may be given effect, that is retrospective effect from lst April, 1986 because when there was an increase in 'Ae pay of the Central Government employees, that was given retrospective effect from lst January, 1986. When the Central Government employees have been given such a facility of retrospective effect, I hope and I would request our hon. Minister to consider this request to give a retros- pective effect. Even at this moment, I hope our hon. Minister would definitely consider this request and give retrospective effect from lst April, 1986, and that would be a welcome measure.

Sir. the strength of the Judges of the Madras High Court is 25, *i.e.* 21 Permanent Judges and 4 Additional Judges. As on date, the strength of the Madras High Court is only 18. By March, 1988 the Chief Justice would be retiring. As on date the vacancies are 7 and by 15th of March, 1988, the vacancies will be 8. And I do not want to go into the plight of the people due to the delayed justice and all those things. So, I would request the hon. Minister to fill up the vacancies as early as possible taking into consideration various aspects because, recently, a controversy also has arisen in Tamil Nadu between the Lav/ Miinister and the Chief Justice. I do not want to go into that. While taking into consideration the whole background, it is also necessary to keep in mind the socio-economic conditions and at the same time the need to uplift the people coming from the down-trodden, from the backward sections. That aspect also should be taken into consideration. That is my request.

Sir, the Judges of the High Courts of other States like Kerala and Andhra Pradesh are enjoying the full facilities of phone calls whereas in the case of the Judge of the Madras High Court, the phone facility is re-duced to 700 total calls, inclusive of free calls per month, except in the case of the hon. Chief Justice. Sir, it is ridiculous to note that earlier to the introduction of this new system, even the first three senior Judges, otherwise called the Portfolio Judges, were enjoying 800 free calls, but when the charge payable for each of the call is increased, the Judges are made to pay from their pocket for extra calls. Sir, the facility of free calls is a status symbol. So, when some of the Judges in the High Courts of some States are enjoying the facility of free calls, why should there be a discrimination against the Judges from some other High Courts? This anomaly also should be removed.

SHRl P. SHIV SHANKER; You must address it to Mr. Aladi Aruna.

SHRI V. GOPALSAMY: We are

[Shri V. Gopalsamy]

helpless. That is why I am addressing it to you and because you are friendly with the Government, you could take it up with the State Government also. *(Interruptions),* You are the mediator now. I would request our hon. Shri Shiv Shanker to take up the issue with the State Government though it is a petty matter.

SHRI M. S. GURUPADASWAMY: He wants your good offices.

SHRI V. GOPALSAMY: Sir, this discrimination should go. It ig ridiculous to expect the High Court Judge to pay for the calls from his pocket. I hope the hon. Law Minister will now take up the issue with the Government.

Sir, there is one more thing which also concerns the State Government. I would request the hon. Law Minister to look into this. In other States, the High Court Judges are allowed to fly the High Court flag on their cars. This system of flying a flag on the cars of the High Court Judges was prevalent for some time in my State, in Tamil Nadu. But it was subsequently given up on account of the policy of the State Government and now the Judges of the High Court of Madras are prevented from flying the High Court flag on their cars. When the Judges of the other High Courts are enjoying such a flag facility, we do not see any reason as to why the Judges of the Madras High Court Should be deprived of this privilege. On this also I would request the hon. Law Minister, because that Government is very friendly or toeing the line of the Central Government, whatever you dictate, they dance to your tunes, to take up the issue with the State Government go that the Judges of the Madras High Court enjoy the facility of flying the flags on their cars.

With theses words, Sir. I conclude.

SHRI DARBARA SINGH (Punjab): Mr. Vice-Chairman, Sir, I want to point out only one thing. Whatever has been said by the hon. Member, the Law Minister will take care of this. But I would like to say that at the time of selection of candidates, whosoever they may be, they will be fulfilling the conditions all right, but it should ascertained that they do not have any feudalistic bias or communal or caste bias at all. This must be taken into account,

THE VICE-CHAIRMAN (SHRI JAGESH DESAI); Malviyaji, five minutes.

SHRI V. GOPALSAMY: Sir, I confined myself to the time. So bonus should be given subsequently.

श्री सत्य प्रकाश मालवीय : उपसभाध्यक्ष महोदय मैं निर्धारित समय में पूरा करने की कोशिश करूंगा । मैंने इस विधेयक को प्रवर समिति को भेजने का प्रस्ताव किया है । वह इसलिए रखा है कि जब संविधान बना था तो उस वक्त हाईकोर्ट जजेज की जो सैलेरी थी वह 3500 रुपये रखी गई थी गत वर्ष इसको बढ़ाकर 8 हजार रुपये किया गया और अब यह प्रावधान किया जा रहा है कि यदि सरकारी आवास में हाईकोर्ट के जजेज नहीं रहेंगे तो प्रतिमास 2500 रुपये मकान का भत्ता मिलेगा । मेरी समझ में नहीं आ रहा है कि 2500 रुपये के पीछे क्या सिद्धान्त है ? दो हजार, चार हजार या दस हजार क्यों नहीं किया गया ? इसीलिए मैंने प्रस्ताव रखा है । मैं अपनी बात वहीं से शुरू करूंगा जहां से मेरे मित्र राम अवधेश सिंह जी ने अपनी बात को समाप्त किया था । 26 नवम्बर, 1987 को अतारांकित प्रश्न संख्या 2049 के उत्तर में बतलाया गया है कि जो अल्पसंख्यक वर्ग है, पिछड़े वर्ग हैं, अनसूचित जातियां हैं हरिजन भाई हैं या महिलाएं हैं इनकी नियक्ति के लिए सरकार तलाश कर रही है...

(व्यवधान)

श्री राम अवधेश सिंह : मंत्री जी सुनिये जरा ।

श्री सत्य प्रकाश मालवीय : माननीय विधि एवं न्याय मंत्री ने जवाब दिया । I am referring to the reply given to Un-starred Question No. 2049 on 26th November, 1987. The Hon. Law Miinister replied that the Government have addressed the Chief Ministers of the States and the Chief Justice of High Courts from time to time requesting them to locate and recom mend persons from the bar belonging to the Scheduled Castes and Tribes and other backward classes and minorities and women who are suitable for appointment as Judges of the High Court so that they could give them better representation in the High Courts than it is at resent

जो प्रश्न राम अवधेश सिंह जी ने किया था वही मेरा प्रश्न था । सरकार ने गाइडलाइंस तय कर दी है गवर्नमेंट के लिए अप्वाइंटमेंट करने के लिए कह रखा है । उसमें लिखा है कि लोकेट किया जाए ढूंढा जाए हिन्दुस्तान में । तो क्या कठिनाई है ऐसे लोगों की नियुक्ति करने में । इन वर्गों के जजों की सुप्रीम कोर्ट और हाई कोर्ट्स में कितनी टोटल स्ट्रेंथ है इन वर्गों के कितने लोग हैं जिसमें इसका जिक्र है । माननीय सदस्यों ने इस ओर भी ध्यान आकर्षित किया और जब अलादी अरुण अपनी बात कह रहे थे तो उन्होंने कहा कि जस्टिस डिलेड इज जस्टिस डिनाइड । अभी शुक्ल जी ने मध्य प्रदेश का जिक्र किया और इलाहाबाद हाईकोर्ट में जो केस पेंडिंग है उनके बारे में यह है--

As per the information furnished by the Registry of the Allahabad High Court 79.595 cases were pending before the Court for more than five years as on 30th June, 1986.

यह निर्विवाद है कि करीब-करीब 16 लाख से लेकर 18 लाख केसेज सर्वोच्च न्यायालय और हमारे देश के जो 18 अलग-अलग उच्च न्यायालय हैं वहां विचाराधीन हैं । उसके बहुत से कारण हो सकते हैं लेकिन एक कारण यह भी है कि जो पद खाली हैं चाहे सर्वोच्च न्यायालय में हों या दूसरे उच्च न्यायालयों में हों उनमें सरकार नियुक्तियां क्यों नहीं कर रही है । ला कमीशन ने भी अपनी रिकमेंडेशन कर रखी है । ला कमीशन की 79वीं रिपोर्ट में जो लिखा है मैं वह पढ़ देना चाहता हूं जिनको कि माननीय भारद्वाज जी मानते हैं अब जरा गौर से इसको वे सुन लेंगे ।

The Law Commission of India observed in its Seventy-Ninth Report: It is our considered •opinion that the delay in filling the vacancies is one of the major contributing factors responsible for the Piling accumulation of arrears. In our opinion when a vacancy is expected to arise out of the retirement of a Judge, steps for filling Up of the vacancy should be initiated six months in advance. The date *on* Which such a vacancy normally arise is always known to the Chief Justice and also to the other concerned. "It should be esured that necessary formalities for appointment of a judge, to fill the vacancies, are completed by the date on wnich the vacancy arises."

मान्यवर चीफ आफ आर्मी स्टाफ के रिटायर होने की तारीख है 6 महीने के बाद लेकिन 6 महीने के पहले ही घोषणा कर दी जाती है कि चीफ आफ आर्मी स्टाफ कौन होगा तो इनके सिलसिले में भी क्या कठिनाई है ।

मैं इन आंकड़ों की ओर आपका ध्यान आकर्षित करना चाहता हूं कि सर्वोच्च न्यायालय की जो सैंक्शन्ड स्ट्रेंथ है वह इस वक्त 26 है और वहां पर 10 स्थान रिक्त हैं । क्या वजह है कि स्थानों को भरने में इतनी कठिनाई हो रही है । दूसरी ओर जो विभिन्न हाईकोर्ट्स हैं उनमें सैंक्शन्ड स्ट्रेंथ है 442 लेकिन इस वक्त 50 जजेज के स्थान रिक्त हैं । मैं आपका ध्यान आकर्षित करना चाहूंगा

On 3lst October, 1987, ther existed six vacancies in Allahabad High Court out of which five are from 15th October

[श्री सत्य प्रकाश मालवीय]

1984. In Andhra Pradesh, from where the learned Law Minister comes, there are two vacancies since 26th November, 1982. Besides, there are 3 vacancies in Andhra Pradesh since 17th October, 1987.

These are the vacancies as I said, lying vacant from 15th October 1984 in Allahabad, and from 17th October in Andhra. Now I take the case of Gujarat. In the Gujarat High Court, there are four vacancies, and out of these four vacancies, two vacancies are from June 1984, one is from 7th June, 1984, and the other is from 26th Tune, 1984.

मैं यह जानना चाहता हूं कि इतने जो केसेज पड़े हुए हैं, लाखों केसेज हैं, न्याय लोगों को मिल नहीं रहा है तो क्या कारण है, क्या कठिनाई है कि इन स्थानों को जल्दी नहीं भरा जा रहा है । मैं फिर ध्यान आकर्षित करना चाहूंगा, अभी हैदराबाद में माननीय न्याय मंत्री जी ने एक की नोट एड्रेस दिया था, उसमें बहुत सी बातें हैं, यह 3 दिसम्बर, 1987 के "हिन्दुस्तान टाइम्स" में छपा है, उसमें ज्यादा जाने की जरूरत नहीं है लेकिन मैं एक बात की ओर उनका ध्यान आकर्षित करना चाहूंगा । हमारे शिवशंकर जी ने वहां कहा :

\Vhere do we stand? Why did the gouble arise? The basic question asked is that if the Supreme Court is not accountable to anyone, should the appointing authority look at the philosophy of judges before appointing them?"

मैं यह जानना चाहता हूं कि इस फिलासफी के पीछे उनका क्या मकसद था क्या आशय था ? जब उत्तर देंगे तो उसको समझाने की कोशिश करेंगे कि कल इस फिलासफी के पीछे कोई पोलिटिकल फिलासफी तो नहीं है क्योंकि मान्यवर, दो दिन के लिए इलाहाबाद हाईकोर्ट में एक व्यक्ति को चीफ जस्टिस बनाया गया, एक्टिंग चीफ जस्टिस थे, रिटायर होने वाले थे और केवल दो दिन के लिए बनाया गया । इसकी क्या आवश्यकता थी ? दो दिन के लिए आप एक्टिंग चीफ जस्टिस रखते हैं इसका मतलब यह है कि आप न्याय के प्रति खुद न्याय नहीं कर रहे हैं । आप और क्या कर रहे हैं कि इतने स्थान वहां पर रिक्त पड़े हैं और उसको जो प्रोसेस है मैं उस पर नहीं जाना चाहता हूं लेकिन उस प्रोसेस के पीछे इतनी कठिनाई नहीं होनी चाहिए । जैसे कि मैंने ध्यान आकर्षित किया कि आंध्र प्रदेश में 82-83 स्थान रिक्त हैं, इलाहाबाद में, गुजरात आदि में चार-चार साल के रिक्त हैं । मंत्री जी इसको समझाने की कोशिश करेंगे ।

इलाहाबाद की बार एसोसिएशन ने एक प्रस्ताव पास किया था जिसकी ओर मैं ध्यान आकर्षित करना चाहता हूं :

"A meeting of the Democratic Lawyers Front an^ Litigants Forum held under the presidentship of MX.. S.K. Garg, Convenor, criticised and. condemned the government policy regarding appointment of judges in the High Courts and Supreme Court. The speakers in the meeting strongly resented the appointment of Chief Justices in the various High Courts for brief periods, making-mockery of the high office and further ignoring the approved names."

एक सज्जन थे इलाहाबाद हाईकोर्ट में वे केवल दो दिन के चीफ जस्टिस बनाये गये। मई 1987 में यह हुआ, अब हम दिसम्बर 1987 में हैं, करीब-करीब 5-6 महीने बीत गये हैं, आज भी इलाहाबाद हाईकोर्ट में एक्टिंग चीफ जस्टिस एक दूसरे सज्जन हैं । क्या वजह है कि इलाहाबाद हाईकोर्ट और अन्य हाईकोर्ट्स में एक्टिंग चीफ जस्टिसेज हैं, रेगुलर चीफ जस्टिस को क्यों नहीं मुकर्रर करते हैं । दूसरा मैं इस ओर भी ध्यान आकर्षित करना चाहता हूं जो pending cases हैं इस सिलसिले में एक आंकड़ा है :

As on July 1 this year (i.e. 1987), there were 1.6 lakh cases pending in the Supreme Court. Of them, 2422 cases were as old as 15 years and 66

ei ses older than that, and the High Courts had about 14 lakh cases pending with them, quite a few of them 10 years old.

तो जो लिटिगेंट पब्लिक है जो लोग न्याय चाहते हैं अगर 15-15 साल तक 20-20 साल तक न्यायालय में मुकदमे विचाराधीन रहेंगे न्यायालय में मुकदमों का फैसला नहीं होगा, तो क्या आप इस देश की जनता के प्रति न्याय कर रहे हैं?

कहा जाता है कि यह टेम्पल आफ जस्टिस है वह न्याय का मंदिर है, लकिन 15 साल हो जाते हैं न्याय मिल नहीं पा रहा है । उसके पीछे जो न्याय नहीं मिल रहा है, उसके पीछे सरकार की नियुक्तियों के संबंध में दोषपूर्ण नीति भी है । आप उनकी संख्या को बढ़ायें । संख्या जितनी आपने मुकर्रर कर दी है, उसके मुताबिक जो आप नियुक्ति करें । वह भी आप नहीं करते हैं ।

तो इसलिए मेरा निवेदन यह है कि इन सारी चीजों पर पुनर्विचार कीजिए और मैं पुनः यह कहना चाहता हूं कि जो हाईकोर्ट जजेज हैं सर्वोच्च न्यायालय के जजेज हैं या चीफ जस्टिस हैं, उनको सम्मान के अनुसार इस महंगाई को देखते हुए एक भले आदमी की तरह जिंदगी जीने का मौका दीजिए । उनकी तनख्वाह और बढ़ा दीजिए, लेकिन मैं निश्चित रूप में यह निवेदन करूंगा कि जो स्थान रिक्त हैं, जो खाली स्थान हैं, उनको जल्दी भरने की कृपा करें जिससे कि आदमी को न्याय मिल सके ।

अन्त में मैं अपनी बात खत्म करते हुए फिर यही निवेदन करना चाहूंगा कि कम से कम इस बात की सफाई मंत्री महोदय देंगे कि जिन उच्च न्यायालयों के चीफ जस्टिस की तरफ मैंने ध्यान आकर्षित किया है कि चार-चार साल, पांच-पांच साल से वहां पर स्थान रिक्त हैं, उनके क्या कारण हैं ?

क्या उनके पीछे कोई पालिटिकल रीजन है, क्या उसके पीछे यह तो नहीं कि ऐसे लोग नहीं मिल रहे हैं कि जो सत्ता-धारी पार्टी के लोग हैं, उनके प्रति कमिटेड नहीं हैं, क्योंकि बराबर यह आरोप लगाया जा रहा है कि वर्तमान सत्ताधारी लोग जो हैं, वह कमिटेड ज्युडिशरी चाहते हैं ? वह चाहते हैं कि ऐसे लोग सुप्रीम कोर्ट में, हाईकोर्ट में पहुंचें, जो संविधान के प्रति नहीं, बल्कि सत्ताधारी पार्टी के प्रति प्रतिबद्ध हों ?

इन्हीं शब्दों के साथ मैं इस विधेयक पर अपनी राय व्यक्त करता हूं ।

SHRI P. SHIV SHANKER: Mr. Vice-Chairman, Sir, I must thank the hon. Members at the outset. Almost all members have been pleased to support the Bill. But while supporting the Bill, various hon. members have been pleased to make diverse observations in regard to the judicial system itself. It is these observations, I think, which call for an answer. In certain respects. I have also to put the record straight So that no lurking suspicion or misunderstanding prevails.

One of the points which has been raised by hon. Members is about the vacancies not being filled up in time. I wouid like to bring just one aspect in connection with this to the notice of the hon. House. The President, for the purpose of appointment of High Court Judges or, even for that matter, appointment of Supreme Court Judges, has to consult several Constitutional authorities. In the case of High Court Judges, there is more than one Constitutional authority. They have to be consulted. Often, it so happens that there is divergence of opinion. Knowing the judicial system itself and based on the experience that I have gained as the Law Minister- first, for two years from 1980 to 1982 and then since July, 1987—I would say that the Central Government, particularly, the Law Minister, endeavours to see that as far as possible consensus emerges in the names. It is a trial which has

This trial is with an objects be a particular authority does let down. This process invol-ot aqite a good time. I have seen in vefy cases. This process is slightly the consuming. If the hon. Members think, well, Constitutional power is in the hands of the President, therefore you consul, and appoint, you can override the other authorities; fair, that can be done, there is no difficulty about that. Cons' itutionally it is Perfect but then our society being a very complex society, always it is better fo take a consensual approach and in this process delays do take place, I do not deny this. Some of the hon. Members have particularly referred to their own cases. Particularly, the hon. Member from Tamil Nadu raised that issue. It is not difficult for me just to override either the Chief Minister or the Chief Jus'ice and appoint but then would I be doing a service to the State? That is why we try to evolve a consensus and in evolving consensus sometimes the positions are laken so strongly that it becomes very difficult, but still in the process it takes time.

SHRI V. GOPALSAMY: That means the ball is in their court in Tamil Nadu.

SHRI ALADI ARUNA alias V. ARUNACHALAM; He is dealing in a general way.

SHRI P. SHIV SHANKER: I will leave it to Shri Aladi Aruna to deal with it, but I would like to tell one thing. I would not like to shirk the responsibility by merely saying this. It is true, we face lot of difficulties and a lot of issues have been raised by hon. Members in this regard. One of the hon. Members has raised the issue as to why a particular Chief Justice had been appointed only for two days. Well, I cannot disclose. I was not the Minister at that time but as a Minister now I take the responsibility on myself and say, I cannot disclose what is there in the file, how the file has developed.

श्री राम अवधेश सिंह: आप सदन को क्यों नहीं बतायेंगे ?

SHRI P. SHIV SHANKER: The point is, if there are charges against those who are not in this House and who cannot defend themselves, I am not going to say anything against them. Therefore, I would like to say that we make endeavours. I can assure that on my part I will make as much endeavour as possible. I would also like to tell hon. Members that I agree that a person should not be appointed—left to myself I totally agree— for two or three or four days or even for a week or one month or two month or two months. It is perfectly all right. I quite agree, buy then sometimes things emerge in a particular fashion. For example, I take the responsibility for having appointed recently a Chief Justice in Delhi High-Court for five days. Yes, I myself that because before me there was precedent of only one day.

SHRI M. S. GURUPADASWAMY: You have done better.

SHRI P. SHIV SHANKER: If I had the precedent of one day. ..

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): You have better.

SHRI P. SHIV SHANKER: One has to look into diverse factors and I would like, where our difficulties are genuine, hon. Members and also the nation to appreciate our difficulties. I have not been a hypocrite. What I have to say, I will say it frankly, I have always been saying so right from the beginning, when I wat the Law Minister and also a Minister in this Central Government for last seven to eight years.

Therefore, what I want, to bring to the notice of the hon. Members is that the delay, in my submission, is inherent in the very system itself. *Untex. ruptions).* Well, you may not agree,

Mr. Gurupadaswamy, that is a different thing.

SHRI M. S. GURUPADASWAMY: It is not inherent. You yourself said that you can appoint a straight way but you do not.

SHRI P. SHIV SHANKER: Then I also said that in system itself you have got to be aware of the complex system of the society.

SHRI M. S. GURUPADASWAMY: You say that.

SHRI P. SHIV SHANKER: That is exactly the thing. That is why before coming to this conclusion I have already laid the foundation for what I wanted to say. Therefore often times delays occur. Some of the hon. Members have raised the question that Vacanlcies are there from 1982, 1983, 1984 etc. That is not correct. The vacancies go on geting filled up. But subsequent vacancies also arise. If you take into consideration the subsequent vacancies and take it back to a particular date, that would not be the correct approach. So I thought I must say that because of exigencies, the delays occur.

SHRI NIRMAL CHATTERJEE (West Bengal); You are creating a problem for us. If you say that we have to trust and not examine it, you put us into difficulty as Members of. Parliament.

SHRI P. SHIV SHANKER: I am sorry that is a Very easy way of putting the question which I will not answer. It is not a question of trust; it is a question of my oah.

SHRI NIRMAL CHATTERJEE: I agree, but the point is that you say that there are such factors also which lead to delays...

SHRI P. SHIV SHANKER: I am saying this. Precisely that ig what I have said.

SHRI NIRMAL CHATTERJEE; That is what y°u are saying. How are we to know that there are no other factors if the Parliament cannot scrutinise?

SHRI P. SHIV SHANKER; I am prepared. That is a matter which could be debated.

SHRI NIRMAL CHATTERJEE; You have talked of another meaning. You have talked of transfer. It could be valid. But how are we to judge whether the transfers are valid if the Parliament is barred from assessing?

SHRI P. SHIV SHANKER; I am not saying that.

SHRI NIRMAL CHATTERJEE: You help us by saying how we can scrutinise this.

SHRI P. SHIV SHANKER: I follow your point. It is true that Parliament and hon. iMembers of Parliament are entitled to the information, but not beyond a particular stage, because where it is a matter as I said, if by putting forth the papers before you, or by disclosing the whole facts before you, if I am placing a person in jeopardy who is not in a position to answer it, I shall not pla^{c}e those facts before you. I am sorry you have t° live with me. Right or wrong, as C rlyle said it, my husband, whether good or bad, is my husband You have got to live with that. If you do not believe me, I leave it there.

SHRI V. GOPALSAMY: There is provision for divorce also.

SHRI P. SHIV SHANKER: Mr. Chatterjee, speaking personally for myself, I am prepared if you evolve a system—I do not know whether it is possible, but it has got to be gone into—whereby a few of the Opposition leaders, on the oath of secrecy, could look into the papers. Perhaps that could be one way of dealing with this. I am only trying to put across this view because speaking for

[Shri P. Shiv Shanker]

myself, I have no objection. I am prepared to make a clean breast of myself on every file. But the system works in a particular manner . But we could perhaps evolve a method. It is a matter where we could sit and wcik out. Whether we can go into it is a question which could be debated in a different way, but this is not the time or occasion where I could express myself on those issues.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: The hon. Minis ter has reminded us about the vacan cies in the Madras High Court that these have remained vacant since 1986. But for the information of the House, I may state that so far as Allahabad High Court is concerned, five vacancies remain there from 1984 and in Andhra Pradesh High Court, two vacancies remain from the year 1982. These facts must be known to the House. You cannot create the impression.....

THE VICE-CHAIRMAN (SHRI JAGESH DESAI); The Minister is replying that point.

SHRI P SHIV SHANKER; I would like to know if it is your case that after 1982, no appointments have taken place so that the vacancies...

SHRI NIRMAL, CHATTERJEE: That is what you should answer. He says it is continuing vacancy. Your case is it is not. That you should definitely clearify.

SHRI P. SHIV SHANKER: At least in respect of Andhra Pradesh High Court, I am aware it is not. There is nothing of that type. What happens is- this.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: It is given in the reply. It has been stated by the hon. Minister that two vacancies remain vacant from 1982.

SHRI P. SHIV SHANKER: I do not know in what context it has been said. I would like to go into it. I can check with you. There should be no difficulty about it. What I am trying to say

SHRI V. GOPALSAMY: Can you enlighten us about the delay in filling up the vacancies in Madras High Court?

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: That he has already explained. But the position is worse in other States.

SHRI V. GOPALSAMY: You should come to that point.

SHRI P. SHIV SHANKER: In a collusion of yours and Mr. Aladi Aruna, I will never be tricked in!

Now, Sir, some of the honourable Members have raised the i^sue about the letters written often about the apponitment of Scheduled Caste Judges, Scheduled Tribe Judges, or of backward classes, women or minorities, etc., etc.

श्री राम अवधेश सिंह : कितना है, जरा बताइए ?

श्री पी० शिवशंकर : मुझे निवेदन तो करने दीजिए । आपने और मालवीय जी ने इस इश्यू को रेज किया है ।

Sir, I would like to bring to your notice that if anybody is responsible for this, it is I who started the letter in August 1980. My letter of August 1980 was the subject-matter of the Judges case also. When I did it ginally, I did it with a very honest intention, and I continue to have hope in that. After all, ours is a very complex, intricate society. Different segments are there in our society— I need not g_0 into the details. Every segment must have a share in the administration, be it the executive,

be it the legislature or be it the judiciary. It is from this angle that I wrote the first letter in August 1980, and I ani glad that some of my successors later on took up that cause. It is true that in spite of this—I concede and I am ashamed to say this as a member of the Government— adequate number of Scheduled Caste, Scheduled Tribe, Backward class, minority or women Judges are not there. I am fighting for it. It takes a little time for me. I have to persuade the other authorities also. I have my difficulties in that.

श्री राम अवधेश सिंह : उपसभाध्यक्ष महोदय, मैं पूछना चाहता हूं कि क्या आपको जानकारी में बैकवर्ड क्लास, शेड्ल्ड क्लास और महिलाओं में योग्य लायर नहीं हैं, जिनकी प्रैक्टिस 10 साल से ऊपर की है ? इस आधार पर आपको खोजने में टटोलने में दिक्कत क्या हो रही है ?

श्री पी० शिव शंकर : भाई, मेरे खोजने या टटोलने की बात नहीं है । इसमें बहुत सी चीजें आती हैं । चीफ जस्टिस साहब को रिकमंड करना पड़ता है । क्या अच्छा होता कि धारा 217 या 124 का संशोधन इस तरह किया जाता कि सारे पावर मुझे दिए जाते तो आप जो चाहते हैं वह बड़ी आसानी से किया जा सकता ।

श्री अटल विहारी वाजपेयी : आप यही चाहते हैं ?

श्री पी० शिवशंकर : मैं, जो सवाल किया जा रहा है उसका जवाब दे रहा हूं ।

श्री राम अवधेश सिंह : : डायरेक्शन तो दिया जा सकता है ? (**व्यवधान**) मुझे बोलने दीजिए । दूसरे भी बोले हैं।

उपसभाध्यक्ष (श्री जगेश देसाई) : आपके सिवाय बीच में किसी ने नहीं बोला है । आप दूसरी बार बोल रहे हैं।

श्री पी० शिव शंकर : आपने इश्यू उठाया है, आप मुझे बोलने दीजिए ।

Same of the authorities did respond. I am not saying that they did r.ot respond. Some have their own approaches. Now, in such a situation, it is only a question of continuous trial. We cannot give up this approach. We have got to go on requesting and we have got to go on persuading so that there is a proper representation to each and every segment in the society. Trials have been going on for quite some time. It is not as though it could be said that trials have never been made. But it presents quite a complex situation, i remember, one of the Chief Justices some time back wrote to me: "Where is it in article 217 about backward classes, Scheduled Castes, Scheduled Tribes, Muslims and so on and so forth? How are you bringing it in? Only go by the merit." What does he mean by merit? He says, "What I select is merit." 6.00 P.M. Now, what can I do? I have to persuade him. Long- back one gentleman wrote to me. I have to persuade him. I have to request him to see the reason. I have to request him to see the complexities in the society. I can do only that. Beyond that what can be done? Sometimes our difficulties are also there.

One of the hon. Members. I must say. made a very very uncharitable remark. Since the remarks are such that thev have brought. me in, I think that I should explain the position. It is very easy to ay in *general* terms. I would have understood if vou had wanted to score a point bv merely saying that judicial decisions are beini influenced by politi cians. You have Pone to tho exten of saying that Mr. Shiv Shankei taking advantage of his position, has

(Shri P. Shiv Shanker]

influenced Judges and judgments. I am not angry with him. I pity him. I am really sorry that he is using a wrong forum for the purpose of expression of this thing. I would have very much liked if he had not done it. Merely because some judgments have gone against your Chief Minister or something like that, should you go on 'talking anything against some people?

PROF. C. LAKSHMANNA; Sir,...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please sit down.

SHRI P. SHIV SHANKER; Please allow me to say this. I am not going to yield on this.

PROF. C. LAKSHMANNA: Just one second.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I will not allow you.

SHRI P. SHIV SHANKER: I am sorry. I will not yield. Having said something, it is unfair.....

PROF. . C. LAKSHMANNA: You say anything, about what we have said. I am only saying that no judgment has gone against the Chief Minister.

SHRI P. SHIV SHANKER: Whatever it is, I am not bothered about it.

PROF. C. LAKSHMANNA: That is all

SHIV P. SHIV SHANKER: Or supposing some judge has decided against me should I go to the extent of saying *this? I* would have very much liked if he had some facts to tell me, "Look, ln such and such a case you have in.-erferred." Why this type of rumour-nongering? I am not bothered about he reflection that he ls making; agas inst me. I am prepared to answer. But, then, this is a reflection on the institution of Judges who are not in a position to answer here. I would have very much wished> and I am prepared.... ^*Interruptions)*

SHRI V. GOPALSAMY: The Minister is replying.

SHRI P. SHIV SHANKER: On my part, I have not shirked my responsibilities. I am prepared. My conduct could be judged by Mr. Gurupadaswamy, Mr. Vajpayee or anybody else. It is no doubt true that I have spoken very frankly, very strongly on many an occasion, on many a subject. But I have not come down to this level to say things of this type. I would have very much wished, if he really wanted that this point should go home, he had told me. I would like to tell the hon. Member that if he can prove one allegation. I shall not continue to sit here. I will not only be not a Minister but I will resign my seat in Rajya Sabha. I am a man of that type. If I could resign about 18 years of my secure life as a Judge, I would 'never continue to be in a position like this and do nasty things as he has tried to put. I have always lived on my own principles, whatever rumour-monger-ing goes on. The greatest misfortune is that i have come into politics. T am saying personally because I have known a lot of people talking. Therefore, I would have very much wished that he had substantiated, instead of making a general allegation and walking out. It is very unfair on the part of the Member to have said that. Then he says, "Dignity of the judiciary. From him should I receive lessons on the dignity of the judiciary? I have lived in that institution, and I am a ' product of that institution. T have believed in criticism, and I am going to say what I have to say about the speech which has been mentioned. I have never shirked my responsibilities, if I have to say something. Therefore, to make allegations of this type and to cast the aspersions, direct or

indirect, on the judiciary and then to proclaim that we are offenders of the same is something which is astounding.

One of the hon. Members—perhaps the same hon. Member—said the system of transfer of the judges is also used to intimidate so that judges may play safe. This issue, of course, some of the other hon. Members have also raised. I would like to very clearly gay that I started this transfer policy when I was the Law Minister in 1980. I was in the dock before the Supreme Court for this. Judges' case by itself is a decision where I have myself been a respondent. I had explained at that time in this House and in the other House as to why this policy has to be pursued. I had said, it not only advances the cause of national integration, but it is more reformative. I would not like to go into those details Jeeause my speeches are already prin-, ted and I have spoken on each and every point in detail. It is not my view alone. It started in 1957 when Mr. Setalved used to be the Chairman of the Law Commission and Mr. Palkhiwala was one of the Members of the Law Commission at that time. It is they wha recommended that the Chief Justice and judges must be from outside. So - much so I have quoted these things.

Even Mr. S.V. Gupte, who happened to be Attorney General during the Janata period ss id, these persons must be from outside. Those who are in the profession know how tilings have been going on. I would not be to say anything more on this exept that it has very great advantages. It is true I for one personally feel, since this policy is not implemented fully difficulties arc coming in. The difficulties are not because of the fact that we are implementing it: difficulties are because of the improper imole-mentatiion of this policy. Immediately after I took over in July 1987, I have been working on this and trying to see that is implemented wholly, Therefore to say, if a Chief Justice comes from outside difficulties will arise, is not correct. Of course, there are a minor points as you might say that he is not aware of the local laws. This is the argument which is often repeated. If that is the argument I have got to accede, then nobody should be appointed to the Supreme Court because he has to deal with different State laws also.

SHRI ATAL BIHARI VAJPAYEE: Language problem is there.

SHRl P. SHIV SHANKER: It is not there. It will arise, it is going to arise. Vajpayee Ji. I would like to tell you this. I have told this earlier and 1 would like to tell you now because I have got my own experience on this. I would like to say what has happened in many cases.

SHRI ALADI ARUNA alias V. ARUNACHALAM: In Supreme Court it. rarely happens, but as far as High Courts are concerned, examination of the evidence deposed in th lower court is mostly examined in the High Court. That is why the judge who is having the knowledge of the local language is helrjed greatly to give correct judgment.

SHRI P. SHIV SHANKER: If that be so, no judge sitting in the Supreme Court is competent to decide the case from Tamil Nadu, where the local laws of that State are involved. If your argument has to be accepted, it leads to this. But I am worried about another thing which I would like to tell you. In 1980-81 I visited some of the States and Law colleges. Law being taught in regional languages, when I was addressing at two places—the Rajasthan Law Faculty as also a college somewhere in the interior of Maharashtra, Latur the Law College students said they would be able to understand neither in Hindi nor in English. They asked me to sneak in their language. I am not aganst any regional language and I need not be misunderstood. This is a matter where

[Shri Aladi Aruna "'was V. Arunaehalarn]

I would request all the hon. Members to kindly put their heads together an*d evolve certain norms in this. If you follow. If a man goes before the Sup-age and if they become Judges of the High Court, a lot of consequences will follow. If a man goes before the Supreme Court and argues, in what language he has to argue?. Lot of things are there. To explain this quite a lot of time will be taken.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please be brief.

SHRI NIRlIVrAL CHATTERJEE: Therefore, what is required is translation and this can be done in multilingual States.

SHRI P. SHIV SHANKER; Mr. Chatterjee, what will happen, I would like to put it this way. Supposing I come from Andhra knowing Telugu and I am a Judge of the Supreme Court and you come from Bengal knowing only Bengali and myself and you sit by the side of each other and then the third Judge from Orissa is there and all the three are from... *(Interruptions).* Will you kindly wait?

SHRI ALADI ARUNA alias V. ARUNACHALAM: The present arrangement is a common language in Supreme Court.

SHRI P. SHIV SHANKER: You don't want to listen to me.....*(Inter ruptions).*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Minister how much time you would take to finish your reply?

SHRI P. SHIV SHANKER. I will take at least 40-45 .minutes because I have to explain.

SHRI NIRMAL CHATTERJEE: We want to lis'en to you. You speak for an hour because you are an interesting speaker. You can educate us. In that case we can adjourn now because in any case the session is being extended.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I think, I will take the consensus of the House. Can the Minister reply tomorrow?

SOME HON. MEMBERS; Yes, tomorrow.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr Minister you can continue your reply tomoi-row.

SHRI P. SHIV SHANKER: I have no problem. I am entirely in your hands.

SHRI NIRMAL CHATTERJEE: We want you to satisfy us becaus^ we will be asking you questions.

SHRI P. SHIV SHANKER: I am prepared. *(Interruptions).*

SHRI NIRMAL CHATTERJEE: We will ask you questions. We want to be satisfied because we know you can satisfy us

PAPERS LAID ON THE TABLE— Contd.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI); Now, we will take up Paper to be laid on the Table. Shri Janardhan Poojari.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : मेरा प्वाइंट आफ आर्डर है...

उपसभाध्यक्ष (श्री जगेश देसाई) प्वाइंट आफ आर्डर है ?

श्री सत्य प्रकाश मालवीय : मेरी आपत्ति यह है कि जो सप्लिमेंटरी लिस्ट आफ बिजनेस है इसमें लिखा है at 6.00 P.M. Now, it is 6.15 P.M.